

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-7005

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PRESCOTT H. RATHBORNE,

Plaintiff-Appellant

-against-

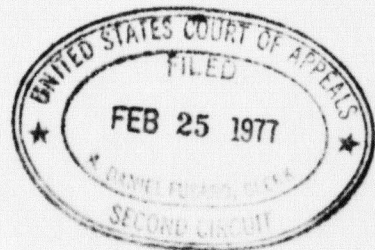
CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., EDWIN J. GLICKMAN,
SALBIAN REALTY CO., INC., SILTAN DEVELOP-
MENT CORP., WOAS PROPERTIES CORP. and
MADISON ASSOCIATES,

Defendants-Appellees

APPEAL FROM ORDER OF SOUTHERN DISTRICT COURT
GRANTING DEFENDANTS' MOTIONS FOR SUMMARY
JUDGMENT

APPENDIX

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PAGINATION AS IN ORIGINAL COPY

APPENDIX
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Prescott H. Rathborne vs. Citadel Management Co., Inc., et al.

NR.	PROCEEDINGS	Judge Wyatt Brieant
11-75	1 Filed Complaint and issued summons.	
05-27-75	Reassigned from Wyatt J. to Brieant J.	
30-75	2 Filed Summons with Marshal's return. Served: Citadel Management Co. Inc Urban Relocation Co. Inc. Edwin J. Glickman Salbian Realty Co. Inc.	by J. Smith on 5-22-75 by J. Smith on 5-22-75 by B. Florio on 5-23-75 by B. Florio on 5-23-75.
13-75	3 Filed Stip. & Order that the time defts. has to answer the complt. is ext. to 7-11-75.....Wyatt, J.	
20-75	4 Filed AMENDED COMPLT.	
7-14-75	5 Filed affdvt & notice of motion by plttf direct deft Glickman to appear to have testimony taken. Ret 7-30-75	
11-75	6 Filed ANSWER to amended complt by defts (Citadel & Urban Reloc.)	
7-18-75	7 Filed summons with Marshal's returns. Served: Madison Assoc. WOAS Properties Siltan Develop.	By: Not served Marshal 6-26-75 L. Wagmen 7-14-75
17-75	7 Filed ANSWER of Deft's Glickman and Salbian with Counterclaims by Deft.Glickman.	
7-18-75	8x Filed Memo-End on back of motion filed 7-14-75....Motion withdrawn as Moot...So Ordered.....Brieant,J.	
7-16-75	8 Filed Plttf's Reply to the Counterclaims by deft. Glickman.	
10-9-75	9 Filed Answer of Defts. Siltan, WOAS and Madison.	NKLM&S
10-23-75	10 Filed Certian Defts' Notice of Motion for an order fora judgment pur to FRCP #56....etc tet. 11-24-75 at 9:30AM Rm 2703.....	
10-23-75	11 Filed Memo of the Madison Defts. in support of motion for summ judg etc.	
10-23-75	12 Filed Folder with Ex Bolder #1 to Exh A	
10-23-75	13 Filed Folder " " #21 " "	
10-23-75	14 Filed " " " #11 " "	
10-23-75	15 Filed " " " #1V " "	
10-23-75	16 Filed " " " #V " "	
11-24-75	Filed Stip & Order adjourning to 12-17-75, motion of the Madison defts. Plttfs opposing papers to be served no later than 10-10-75...BRIEANT,J	
12-10-75	17 Filed mar halls return, served; Madison Assoc. on 12-2-75	
12-12-75	18 Filed deft. Citadel & Urban affidavit & rule 9 (g) statement & notice of motion for summary judgment dismissing the amended complaint Ret. 1-14-76	
12-16-75	19 Filed Stip & Order adj the Madison Defts' motion to 1-14-76 same time & Place....Brieant,J. (V JUDGE)	
1-6-76	Filed Stip & Order that motions of Madison defts and Citadel Manag. Co and Urban Rel. are adj to 1-28-76 at 9:30AM Rm 2703....Brieant,J. (12)	

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PROCEEDINGS

1-19-76 Fld Stip & Order that the motion of the Madison Assoc and Urban Rel. and Citadel Manag. rot on 1-28-76 ar adj to 3-12-76 at 9:30AM Rm 2703. Brieant, J.

3-9-76 Fld STip between ptys...the motions of the Madison debts and Citadel & Urban Rel. Rel. debts are adj sine die....

3-9-76 Fld Memo End on bk of stip fld 3-9-76...The Stip may be fld.. but will not be marked So Ordered or approved by this Court...the motions are adj. on the Court's motion until 9-8-76 at 9:30AM...etc.... So Ordered-Brieant, J. mn

3-22-76 Fld Pltff's N tice of Motion for an order to suppress the deposition of P. Rathborne....ret 4-7-76 at 9:30AM/ Rm 2703.

5-76 Fld Stip & Order that plttf's motion to suppress is adj to 4-28-76..Brieant, J.

4-22-76 Fld debts Glickman, Salbian Realty Co., Siltan Devel. Corp., WOAS., and Madison Asso, in opposition to plttf's motion to suppress his deposition.

4-22-76 Fld Memo of Law by certain debts in opposition to plttf's motion to suppress.

4-22-76 Fld Debts Citadel Manag. & Urban Rel's affdvt in opposition to plttf's motion suppressing his deposition.

4-28-76 Fld Memo End on bk of motion fld 3-22-76...The within motion is in all respects denied.....etd....So Ordered....Brieant, J. mn

4-29-76 Fld Reply Affdvt of plttf in support of 32 motion.

4-29-76 Fld Pltff memo of law " " " " "

9-2-76 Filed plttfs affdvt in opposition to the motion of the "Madison debt" to dismiss the complt.

9-2-76 Filed plttfs Rule 9(g) Statement.

9-2-76 Filed plttfs memo of law in opposition to motions of debts for summary judgment & protective order.

9-7-76 Fld debts Glickman, Salbian, Siltan, Woas and Madison's affdvt in reply and further support of the Madison debts motion for summ judg.

9-7-76 Fld Madison Debts' Reply memo in further support of their motion for summ judg.

9-7-76 Fld debts Citadel & Urban s affdvt in further support of motion for summ judg.

12-6-76 Fl Letter from B. B. Davis to Judge Brieant dtd 10-13-76

12-6-76 Fl Letter from T. . Moreland dtd 9-29-76 to Judge Brieant,

12-6-76 Fl letter from B. B. Davis to Judge Brieat dtd 9-20-76

12-6-76 Fl Letter from T. T. Moreland dtd 9-8-76 to Judge Brieant.

12-6-76 Fl Pltff's Exhibits submitted in opposition to motions.

12-7-76 Fld Memorandum & Order.....Debts' summ judg motion is granted... Debts' alternative motion for protective order, seeking prohibition of further discovery is regarded as moot....So ORdered....Brieant, J. mn

12-9-76 Fld Judgment ...Ordered that debts Citadel Management Co., Urban Relocation Co., J.Glickman, Salbian Realty Co., Siltan Development Corp., WOAS and Madison Assos have judgment against plttf P. H. Rathborne dismissing the complt in its entirety.....R. F. Burhardt, Clerk. mn

12-23-76 Fld Debts Madison Assoc's Notice of Entry of Judgment Fl 120-9-76

12-23-76 Fld " " " " " of Memo & Order fld 12-7-76

12-27-76 Fld Pltff's Notice of Appeal to USCA from judgment etd 12-9-76 copies mailed on 12-27--76 to: Nickerson, Kramer, Lowenstein, Messen, Kamin & Soll... and to Turchin & KOPPER

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PRESCOPT H. RATHBORNE,

Plaintiff,

-against-

CITADEL MANAGEMENT CO., INC., URBAN:
RELOCATION CO., INC., EDWIN J.
GLICKMAN, SALBIAN REALTY CO., INC.,:
SILTAN DEVELOPMENT CORP., WOAS
PROPERTIES CORP. and MADISON
ASSOCIATES,

Defendant.
-----X

75 Civ. 2392-CLB

MEMORANDUM AND ORDER

Bricant, J.

By his amended complaint plaintiff sues defendants Edwin J. Glickman, Salbian Realty Co., Siltan Development Corp., Woas Properties Corp., and Madison Associates (hereinafter referred to collectively as the "Madison defendants")--assemblers of the East 53rd Street block and underlying fee-owners of his rent control residence--as well as the two companies--Citadel Management Co., Inc. ("Citadel") and Urban Relocation Co., Inc. ("Urban")--retained by the Madison defendants to manage their buildings and relocate tenants. Jurisdiction is premised on diversity of citizenship, 28 U.S.C. §1332. Plaintiff was a citizen of Louisiana when the action was filed. Defendants are New York corporations, an individual and a partnership. The

OPINION

theory of the action is harassment, or alternatively, tortious nuisance.

Defendants have moved for summary judgment pursuant to Rule 56, F.R.Civ.P. The motion is supported and opposed by supplemental pleadings and affidavits, and depositions in the prior case, discussed below, which may be characterized as truly extensive. In determining whether there are issues of fact to be tried, this Court has drawn all reasonable inferences and resolved all ambiguities in favor of plaintiff. Heyman v. Commerce and Industry Ins. Co., 524 F.2d 1317 (2d Cir. 1975); Judge v. City of Buffalo, 524 F.2d 1321 (2d Cir. 1975).

The Undisputed Facts.

In 1965 and 1966 plaintiff established a residential tenancy at 200 East 53rd Street in New York City (hereinafter referred to as the "building"). His lease expired prior to 1972, and he continued in possession as a "statutory tenant" of 873 Corporation, an entity controlled by Sol Garfinkel. That corporation in turn is tenant under a long-term net lease on the building expiring in 1993. Its landlord and owner of the fee title is a Madison entity.

In 1967 the Madison defendants began to assemble property for possible redevelopment intended to comprise the entire block

OPINION

bounded by Second Avenue, Third Avenue, East 52nd and East 53rd Streets, including 200 East 53rd Street. In 1971 the Madison defendants, aided by Urban and Citadel, tinned over and closed with brick the openings in various other buildings on the block which had been acquired and vacated preparatory to demolition. They posted signs indicating that the block was being vacated. The Madison defendants also provided facilities in several of their buildings for "Odyssey House", a non-profit drug rehabilitation center.

In November of 1972 plaintiff vacated his apartment and moved to Louisiana. He filed this action on May 21, 1975.

The Complaint.

Plaintiff's claim is premised upon defendants' activities described above, as well as upon an unsupported allegation that defendants threatened their other tenants who refused to vacate with physical and financial injury. As a result of these activities, plaintiff claims, the living conditions on the block deteriorated to the extent that he was forced to vacate his apartment.

In his first cause of action plaintiff requests damages in the sum of \$450,000.00, including psychological damages. In a second cause of action plaintiff requests \$5,000,000.00 in

OPINION

punitive damages, seeking to claim in the interests of thousands of tenants on the East 53rd Street block and on other blocks around New York City who, as a result of those actions enumerated in the first cause of action, suffered "anguish and financial loss." (Amended Complaint ¶13). No motion has been made to declare a class action pursuant to Rule 23, F.R.Civ.P.

Prior Proceedings.

Plaintiff has been in this Court before. In February of 1973 he commenced a suit, Prescott H. Rathborne v. Citadel Management Co., Inc., Urban Relocation Co., Inc., S. Garfinkel, Edwin J. Glickman, Odyssey House, Inc., 873 Third Avenue Corp. and Salbian Realty Co., Inc., 73 Civ. 612, alleging that defendants joined in a conspiracy to harass him and force him to vacate his apartment. Plaintiff's complaint in that action pointed, inter alia to the same activities he objects to in the instant case. In August of 1974, on the eve of trial, this Court (Judge Gus J. Solomon, D.Or., sitting by designation) signed an order discontinuing the prior action "without prejudice" as to all defendants except Garfinkel and 873 Third Avenue Corp. Plaintiff proceeded to trial against these two remaining defendants (his immediate landlord and its president) before Judge Solomon without a jury. In an opinion and findings dated April 24, 1975, Judge Solomon found that plaintiff's complaint sounded in constructive eviction;

OPINION

that he had failed in his proof of that cause of action, and that regardless of proof, his claim was barred because of failure to vacate the premises within two months of the occurrence of the acts complained of. The Court of Appeals affirmed without opinion.

With respect to this motion this Court has considered papers submitted in the former proceeding, including the depositions taken of the discontinued defendants, papers submitted in connection therewith, and the complete trial transcript. Two things our examination does not disclose are why plaintiff discontinued as against these defendants on the eve of trial and after he had enjoyed full pre-trial discovery, and why these defendants suffered the voluntary discontinuance to be styled "without prejudice." Haply this is of no importance except to an overburdened Court which should not have to try the same facts twice in two different actions by the same plaintiff.

The Administrative Remedy Available
to Plaintiff Was Exclusive.

Defendants urge that plaintiff had an exclusive statutory remedy. This Court agrees. As a statutory tenant, plaintiff remained in possession of his apartment, not by any express or implied agreement, but solely by compulsion of state rent control law. His possessory rights were purely statutory.

OPINION

Whatever rights he had in connection with such possession derives solely from the statutory provisions in the New York Rent Control Laws. Drinkhouse v. Parka Corp., 3 N.Y.2d 82, 87 (1957); N.Y. Jur., Landlord & Tenant §55. Plaintiff had a remedy only if and to the extent New York's elaborate rent control is so provided. Uberman v. Lasner, 55 Misc.2d 1027, 1031 (Sup.Ct. Kings Co. 1968), relying on Rosner v. Textile Binding & Trimming Co., 300 N.Y. 319, 322-23 (1950).
164 NYS2d 1
287 NYS2d 464
90NE2d 481

It is clear that plaintiff's grievance is recognized in the N.Y.C. Rent and Eviction Regulations (N.Y. UNconsol. Laws McFinney 1974) and that a remedy was afforded him. See Regulations §61(b), 70-74, 78(b).^{1/} Plaintiff's administrative remedy was exclusive. Barbee v. 2639 Corp., 284 App.Div. 298 (1st Dept. 1954).
130 NYS2d 758

The reasons supporting this state policy are self-evident. It is a commonly held belief that administrative bodies possess greater expertise and familiarity with their specialized subject matter than do courts. An agency responsible for the supervision of all rent-control apartments in New York City is more likely to render an informed decision on each claim, and build a body of consistent decisions on this type of claim. Moreover, because of its facility in the field, such an agency may well be able to effect compromises or adjustments between the parties, thereby obviating litigation.

OPINION

Plaintiff disputes the availability of an administrative remedy on two principal grounds. First, he contends that the defendants are not "landlords" under the definitional section, §2(h), of the Rent Regulations because they are the underlying fee owners of the property and their agents, rather than his immediate lessor. In view of Gabel v. Eichner, 38 Misc.2d 844, 847 (Sup.Ct. N.Y. Co. 1963) this argument must fall. The court there squarely held that underlying fee owners are "landlords" within the meaning of §2(h), notwithstanding any lack of privity, and further stated that any other interpretation would be inconsistent with the legislative intent in framing the Rent Laws and Regulations--that of creating an effective system of rent controls. Regarding Urban and Citadel we need look no further than §78 of the Regulations authorizing administrative proceedings against "the landlord or any person acting on his behalf."

Additionally, in opposing summary judgment, plaintiff relies on a non-final order of the Rent Control Administration decontrolling one half of his apartment. This reliance is somewhat frivolous in view of plaintiff's prior application to Judge Solomon requesting that he stay trial of the prior action until the Housing and Development Administration, characterized by plaintiff as "the agency with particular expertise in this area", make its determination. Litigants should not be rewarded for blowing hot and cold in a lawsuit in accordance with their

OPINION

Immediately received about 1000 letters.

While it is difficult to comprehend one-half of an apartment as decontrolled, even if such were the case, it would at least be appropriate for this court to stay litigation concerning the decontrolled half until the dispute concerning the other half was disposed of by the proper administrative tribunal.

I find that plaintiff had available to him an administrative remedy at the time he vacated his apartment and for 90 days thereafter. His failure to pursue that remedy does not alter the fact that it is inappropriate for this Court thereafter to entertain jurisdiction. A state court would decline to do so. See Barbee v. 2639 Corp., supra.

There is an additional reason for granting defendants' summary judgment motion: plaintiff's complaint has failed to state a claim, and the supplemental proof submitted by him shows affirmatively that he cannot do so.

The activities set forth in plaintiff's complaint may, for convenience, be grouped into two categories, the first are those undertaken by defendants in order to assemble the block (signs, tinning and refusal to offer vacated premises for new rental); and the second is their donation of unutilized space to Odyssey House.

OPINION

In the first grouping, it is indisputable that each activity taken alone was lawful, as was defendants' overall enterprise, that of redeveloping the block. Not only did defendants do nothing violative of the zoning laws, they adhered to all the New York Administrative Code regulations regarding their undertaking.^{2/} The operation of Odyssey House, in addition to being lawful, advances the public policy of this State, concerned with the rehabilitation and treatment of drug addicts. See, e.g., N.Y. Mental Hygiene Law §§1.03, 31.01 (McKinney Supp. 1976). It is entirely proper and laudable to furnish premises to Odyssey House, and a property owner doing so may presume that it will conduct its important affairs in conformity with law, or that any violation on its part will provoke police action.

Because these lawful and socially desirable activities cannot be deemed nuisances per se, Slevin v. Long Island Jewish Medical Center, 66 Misc.2d 312 (Sup.Ct. Nassau Co. 1971); Keenly v. McCary, 137 Misc. 524 (Sup. Ct. Onondaga Co. 1930), plaintiff must show a factual basis for a cause of action either in intentional or negligent nuisance. His failure to allege or prove that he ever complained to defendants concerning what he now deems to have been intolerable conditions created by Odyssey House, thus never having put them on notice nor having given them an opportunity

OPINION

To correct the situation, renders his cause of action insufficient as a matter of law. Bison v. N. Y. Trap Rock Corp., 293 N.Y. 509, 61 (1944); Amalgamated Electric Ass. Inc. v. Christo Poulos & Co., 43 Misc.2d 182, 167 (Sup.Ct. Kings Co. 1964).

The undisputed presence of an unrelated poorly supervised methadone clinic located across the street from plaintiff's apartment, in premises owned by strangers to this action, highlights the insufficiency in plaintiff's pleadings and proof. While defendants have come forward with proof that Odyssey House housed 80 people, 50 of whom were resident staff, and 30 of whom were drug free, well supervised patients, plaintiff has not shown that the conditions in the street of which he complains (such as the presence of derelicts, addicts and prostitutes) were caused by persons associated with Odyssey House or were proximately caused by the assemblage, or any acts of the defendants sued here.

Finally, because defendants' assemblage, and Odyssey House were not nuisances per se, under the circumstances of this case, the privilege of an owner to make a reasonable and lawful use of its own property is entitled to no less protection than is the right of others to enjoy their premises. McCarty v. Natural Carbonic Gas Co., 189 N.Y. 40, 49 (1907). In order to make out a cause of action in nuisance, plaintiff must show that defendants could have reduced or eliminated the claimed hardship

OPINION

to plaintiff, and still have carried on their activity without incurring unreasonable expense. W. Prosser, Torts, 526, 529 (4th ed. 1971). This, he has failed to do, and cannot do.

For all the reasons stated above, aside from the failure to exercise his exclusive administrative remedy, plaintiff's claims are insufficient. There are no genuine issues of fact on which to go to trial. Defendants' summary judgment motion is therefore granted.

Defendants' alternative motion for a protective order, pursuant to Rule 26(C), F.R.Civ.P., seeking prohibition of further discovery is regarded as moot.

So Ordered.

Dated: New York, New York
December 6, 1976

Charles L. Bryant

Charles L. Bryant
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRESCOTT H. RATHBORNE,

Plaintiff,

-v-

CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., EDWIN J. GLICKMAN,
SALBIAN REALTY CO., INC., SILTAN
DEVELOPMENT CORP., WOAS PROPERTIES
CORP. and MADISON ASSOCIATES,

75 Civ. 2392

COMPLAINT

Defendants.

Plaintiff, for his complaint, by BRADLEY B. DAVIS,
his attorney, alleges as follows:

1. Jurisdiction is founded on diversity of citizenship. Plaintiff is a citizen and resident of Louisiana. Upon information and belief, defendant Glickman is a citizen and resident of New York State, defendant Madison Associates is a New York partnership, and all other defendants are New York corporations with their principal places of business in New York State.

2. The matter in controversy, exclusive of interest and costs, exceeds the sum of \$10,000.00

3. Venue lies within the jurisdiction of the United States District Court for the Southern District of New York because all of the defendants have their offices and principal places of business within said district.

4. From 1965 through November, 1972, plaintiff was a tenant in a rent-controlled apartment at 200 East 53rd Street in Manhattan.

5. At some time prior to 1970, defendants Glickman and Madison Associates decided to assemble the entire city block

COMPLAINT

on which plaintiff's aforesaid apartment was located, in order to construct a multi-purpose office and residential complex.

6. In order to erect said complex, the existing structures had to be demolished, including the building in which plaintiff then resided.

7. In order to demolish said structures, the legal tenants therein had to be caused to be removed.

8. In furtherance of the above, the defendants conspired among themselves and with others unknown to plaintiff but including the partners of Madison Associates to cause the tenants on the block, including plaintiff, to vacate their premises by improper and illegal means or by technically legal means used for illegal ends. These means included but were not limited to tinning and bricking up buildings and windows to give the block an abandoned appearance; posting large and ungainly signs incidating that the block was being vacated; renting or giving a large number of buildings on the block to drug rehabilitation centers (although the area was not a center of drug addiction) in order to bring unsavory persons to the neighborhood; refusing to re-rent vacated apartments or stores so that the block took on a derelict character; refusing to maintain properties on the block; threatening tenants who refused to vacate with physical and financial injury; and other diverse improper and illegal means.

9. By reason of all of the above, the block became so derelict that it was uninhabitable, and plaintiff was forced to vacate his apartment in November of 1972.

10. All of the acts, above, moreover, constituted harassment of plaintiff by the defendants.

11. By being forced to so vacate his apartment, plaintiff suffered damages in the sum of \$200,000 for loss of permanent improvements

COMPLAINT

made by him; \$100,000 for loss of value of rent-controlled apartment; \$50,000 in other expenses, including legal fees, moving expenses and protective devices due to changed character of block; and \$100,000 in psychological damage.

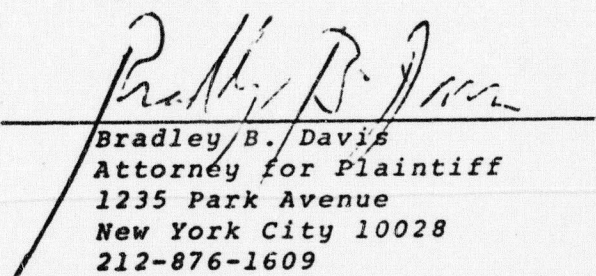
AS AND FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANTS GLICKMAN, URBAN
RELOCATION, CITADEL MANAGEMENT AND
MADISON ASSOCIATES.

12. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 11 herein.

13. Similar acts to which plaintiff refers in the first cause of action were undertaken by the above defendants for similar purpose against thousands of tenants on this block and on other blocks throughout New York City, causing said tenants great anguish and financial loss.

WHEREFORE, PLAINTIFF DEMANDS JUDGMENT AGAINST DEFENDANTS IN THE SUM OF \$450,000 ON HIS FIRST CAUSE OF ACTION: AND FURTHER DEMANDS PUNITIVE DAMAGES AGAINST DEFENDANTS GLICKMAN, URBAN RELOCATION, CITADEL MANAGEMENT AND MADISON ASSOCIATES ON HIS SECOND CAUSE OF ACTION IN THE SUM OF \$5,000,000.00 TOGETHER WITH INTEREST AND COSTS.

Plaintiff demands trial by jury.



Bradley B. Davis
Attorney for Plaintiff
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212-876-1609

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

PRESCOTT H. RATHBORNE,	:	
	:	
Plaintiff,	:	
	:	75 Civ. 2392 (IEW)
-against-	:	
	:	Answer of Defendants
CITADEL MANAGEMENT CO., INC., URBAN	:	Glickman and Salbian
RELOCATION CO., INC., EDWIN J.	:	with Counterclaims by
GLICKMAN, SALBIAN REALTY CO., INC.,	:	<u>Defendant Glickman</u>
SILTAN DEVELOPMENT CORP., WOAS	:	
PROPERTIES CORP. and MADISON	:	
ASSOCIATES,	:	
	:	
Defendants.	:	

-----x

Defendants Edwin J. Glickman and Salbian Realty Co., Inc., by their attorneys, Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll, answer the amended complaint ("complaint") as follows:

With Respect to the First Cause of Action

1. Deny that they have knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the complaint, except admit that defendant Edwin J. Glickman is a citizen and resident of New York State, that Salbian Realty Co., Inc.

GLICKMAN/SALBIAN ANSWER

("Salbian"), WOAS Properties Corp. and Siltan Development Corp. are New York corporations with their principal places of business in New York State, and that Madison Associates is a New York partnership.

2. Deny that they have knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 3 and 4 of the complaint.

3. Deny the allegations contained in paragraphs 5 through 7 of the complaint, except admit that prior to 1970 defendants Glickman and Madison Associates decided to attempt to assemble property in the block in which 200 East 53rd Street was located for possible future development.

4. Deny the allegations contained in paragraphs 8 through 11 of the complaint.

With Respect to the Second Cause of Action
(against defendant Glickman but not
defendant Salbian)

5. With respect to the allegations contained in paragraph 12 of the complaint, defendant Glickman repeats and realleges his responses above to the allegations contained in paragraphs 1 through 11 of the complaint.

6. Defendant Glickman denies the allegations contained in paragraph 13 of the complaint.

First Affirmative Defense

7. Under the law of the State of New York, the exclusive remedy for the wrongs alleged in the complaint is

GLICKMAN/SALGIAN ANSWER

the statutory remedy provided by New York Unconsolidated Laws § 8610(h) (McKinney 1974).

8. This Court lacks jurisdiction over the subject matter of this action.

Second Affirmative Defense

9. The complaint fails to state a claim upon which relief may be granted.

Third Affirmative Defense

10. Plaintiff is barred from asserting the claims contained in the complaint by the applicable statutes of limitation and by laches.

Fourth Affirmative Defense

11. Plaintiff is estopped from asserting some or all of the allegations of fact contained in the complaint by reason of the judgment entered against plaintiff by this Court on or about April 28, 1975 in the action of Prescott H. Rathborne v. Citadel Management Co., Inc., et al., S.D.N.Y., Index No. 73 Civ. 612 (CLB).

Fifth Affirmative Defense
(to Second Cause of
Action Only)

12. Plaintiff lacks standing and is without capacity to maintain the second cause of action alleged in paragraphs 12 and 13 of the complaint.

For a First Counterclaim by Defendant
Edwin J. Glickman Against Plaintiff

13. Defendant Edwin J. Glickman is a citizen of the State of New York.

GLICKMAN/SALSIAN ANSWER

14. Upon information and belief, plaintiff Prescott H. Rathborne is a citizen of the State of Louisiana.

15. The amount in controversy under this counter-claim, exclusive of interest and costs, exceeds the sum of \$10,000.

16. Jurisdiction is conferred on this Court under the provisions of 28 U.S.C. § 1332 by virtue of the diverse citizenship of defendant Edwin J. Glickman and plaintiff Prescott H. Rathborne.

17. On or about October 5, 1972, plaintiff wrote the letter annexed to this answer as Exhibit "A" ("the first letter") and, upon information and belief, transmitted it to, at a minimum, the various news media, civic organizations, law enforcement agencies and public officials listed on page 4 of the first letter.

18. The accusations made in the first letter were intended by plaintiff, and would be and were understood by reasonable men and women, to relate to and concern defendant Edwin J. Glickman. These accusations concerning Mr. Glickman were and are completely false and utterly without foundation. Mr. Glickman is a most honorable man held in high regard and esteem in the community.

19. Insofar as the first letter concerns Mr. Glickman, it is false, defamatory and libelous on its face.

GLICKMAN/SALDAN ANSWER

20. By reason of plaintiff's writing and transmittal of the letter, Mr. Glickman's good name and high reputation have been injured and he has sustained mental and physical anguish and suffering.

21. Plaintiff's writing and transmittal of the first letter were acts committed maliciously, recklessly and in utter disregard of the attendant consequences to Mr. Glickman.

For a Second Counterclaim by Defendant
Edwin J. Glickman Against Plaintiff

22. Defendant Edwin J. Glickman repeats and re-alleges each and every allegation contained in paragraphs 13 through 16 of the first counterclaim against plaintiff above.

23. On or about November 20, 1972, plaintiff wrote the letter annexed to this answer as Exhibit "B" ("the second letter") and transmitted it to defendant Edwin J. Glickman and, upon information and belief, the other four addressees of the letter. Upon information and belief, plaintiff also transmitted copies of the second letter to, at a minimum, the recipients indicated on the last page of the second letter: the New York City Office of Rent Control, the Columbia Broadcasting System, WMCA Radio Station, New York Magazine, a New York State Assistant Attorney General and the Village Voice.

24. The accusations made in the second letter were intended by plaintiff, and would be and were understood by reasonable men and women, to relate to and concern defendant Edwin J. Glickman. These accusations concerning Mr. Glickman were and are completely false and utterly without foundation.

GLICKMAN/SALBIAN ANSWER

Mr. Glickman is a most honorable man held in high regard and esteem in the community.

25. Insofar as the second letter concerns Mr. Glickman, it is false, defamatory and libelous on its face.

26. By reason of plaintiff's writing and transmittal of the second letter, Mr. Glickman's good name and high reputation have been injured and he has sustained mental and physical anguish and suffering.

27. Plaintiff's writing and transmittal of the second letter were acts committed maliciously, recklessly and in utter disregard of the attendant consequences to Mr. Glickman.

WHEREFORE,

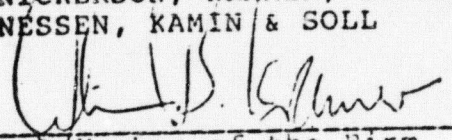
(i) Defendants Edwin J. Glickman and Salbian Realty Co., Inc., demand judgment dismissing the complaint against them, together with the costs and disbursements of this action and such other and further relief as to the Court may deem just and proper;

(ii) Defendant Edwin J. Glickman demands judgment on his first counterclaim against plaintiff for (a) \$500,000 for injury to his name and reputation and for mental and physical anguish; (b) \$1,000,000 punitive damages, together with the costs and disbursements of this action; and (c) such other and further relief as the Court may deem just and proper;

Glickman/Salbian Answer

(iii) Defendant Edwin J. Glickman demands judgment on his second counterclaim against plaintiff for (a) \$500,000 for injury to his name and reputation and for mental and physical anguish; (b) \$1,000,000 punitive damages, together with the costs and disbursements of this action; and (c) such other and further relief as the Court may deem just and proper;

NICKERSON, KRAMER, LOWENSTEIN
NESSEN, KAMIN & SOLL

By 

A Member of the Firm
Attorneys for Defendants
Edwin J. Glickman and
Salbian Realty Co., Inc.
919 Third Avenue
New York, New York 10022
(212) 688-1100

Dated: New York, New York
July 11, 1975

MADISON ANSWER

Defendants Siltan Development Corp., WOAS Properties Corp. and Madison Associates, by their attorneys, Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll, answer the amended complaint ("complaint") as follows:

With Respect to the First Cause of Action

1. Deny that they have knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the complaint, except admit that defendant Edwin J. Glickman is a citizen and resident of New York State, that Salbian Realty Co., Inc.,

WOAS Properties Corp. ("WOAS") and Siltan Development Corp. ("Siltan") are New York corporations with their principal places of business in New York State, and that Madison Associates ("Madison") is a New York partnership.

2. Deny that they have knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 3 and 4 of the complaint.

3. Deny the allegations contained in paragraphs 5 through 7 of the complaint, except admit that prior to 1970 defendants Glickman and Madison decided to attempt to assemble property in the block in which 200 East 53rd Street was located for possible future development.

4. Deny the allegations contained in paragraphs 8 through 11 of the complaint.

MADISON ANSWER

With Respect to the Second Cause of Action
(against defendant Madison but not
defendants WOAS or Siltan)

5. With respect to the allegations contained in paragraph 12 of the complaint, defendant Madison repeats and realleges its responses above to the allegations contained in paragraphs 1 through 11 of the complaint.

6. Defendant Madison denies the allegations contained in paragraph 13 of the complaint.

First Affirmative Defense

7. Under the law of the State of New York, the exclusive remedy for the wrongs alleged in the complaint is the statutory remedy provided by New York Unconsolidated Laws § 8610(h) (McKinney 1974).

8. This Court lacks jurisdiction over the subject matter of this action.

Second Affirmative Defense

9. The complaint fails to state a claim upon which relief may be granted.

Third Affirmative Defense

10. Plaintiff is barred from asserting the claims contained in the complaint by the applicable statutes of limitation and by laches.

Fourth Affirmative Defense

11. Plaintiff is estopped from asserting some or all of the allegations of fact contained in the complaint by reason of the judgment entered against plaintiff by this Court on or about April 28, 1975 in the action of Prescott H. Rathborne v. Citadel Management Co., Inc., et al., S.D.N.Y.,

MADISON ANSWER

Index No. 73 Civ. 612 (CLB).

Fifth Affirmative Defense

12. The court lacks jurisdiction over the persons of defendants WOAS, Siltan and Madison by reason of the insufficiency of service of process upon them.

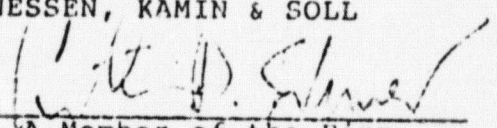
Sixth Affirmative Defense (to Second Cause of Action Only)

13. Plaintiff lacks standing and is without capacity to maintain the second cause of action alleged in paragraphs 12 and 13 of the complaint.

WHEREFORE, Defendants Siltan Development Corp., WOAS Properties Corp. and Madison Associates demand judgment dismissing the complaint against them, together with the costs and disbursements of this action and such other and further relief as to the Court may seem just and proper.

NICKERSON, KRAMER, LOWENSTEIN
NESSEN, KAMIN & SOLL

By


A Member of the Firm
Attorneys for Defendants
Siltan Development Corp.,
WOAS Properties Corp.
and Madison Associates
919 Third Avenue
New York, New York 10022
(212) 688-1100

Dated: New York, New York
July 18, 1975

CITADEL/URBAN ANSWER

- - - - -X

Defendants, Citadel Management Co., Inc. and Urban Relocation Co., Inc., by their attorneys, Turchin & Topper, allege the following as and for their answer to the amended complaint:

AS TO THE FIRST CAUSE OF ACTION

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶1 of the amended complaint, except admit that defendants Citadel Management Co., Inc. and Urban Relocation Co., Inc. are corporations incorporated under the laws of the State of New York with their principal places of business in New York City.

2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in ¶s 2, 3 and 4 of the complaint.

3. Deny the allegations contained in ¶s 5, 6, 7, 8, 9, 10 and 11 of the amended complaint.

AS TO THE SECOND CAUSE OF ACTION

4. These defendants repeat and reallege each and every response made to the allegations contained in ¶s 1 through 11, of the amended complaint, in response to the allegations contained in ¶12 of the amended complaint.

5. These defendants deny the allegations contained in ¶13 of the amended complaint.

CITADEL/JORDAN ANSWER

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. This Court lacks jurisdiction over the subject matter of this action inasmuch as the exclusive remedy for the wrongs alleged in the complaint, pursuant to the laws of the State of New York, is a statutory remedy provided by New York Unconsolidated Laws §8610(h).

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. The amended complaint fails to state a claim upon which relief may be granted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. Plaintiff is barred from asserting the claims contained in the amended complaint by the applicable statute of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. Plaintiff is barred from asserting the claims contained in the amended complaint pursuant to the doctrine of laches.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. Plaintiff is barred and estopped from asserting some or all of the allegations contained in the amended complaint by reason of the doctrine of collateral estoppel founded upon the judgment entered against this plaintiff by this Court on or

about April 28, 1975 in the action entitled "Prescott H. Rahhborne
-v- Citadel Management Co., Inc., et al, Docket No. 73 Civ. 612
(CLB)?.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. Plaintiff lacks standing and is without the capacity to maintain the second cause of action alleged in ¶s 12 and 13 of the amended complaint.

WHEREFORE, defendants Citadel Management Co., Inc. and Urban Relocation Co., Inc. demand Judgment dismissing the amended complaint, as against them, together with the costs and disbursements of this action, and such other, further and different relief as to the Court may seem just and proper.

Dated: New York, New York
July 10, 1975

TURCHIN & TOPPER

By: K/ E F T
A Member of the Firm
Attorneys for defendants
Citadel Management Co., Inc.
Urban Relocation Co., Inc.
Office & P.O. Address
60 East 42nd Street
New York, New York 10017
(212) MO 1-0420

Plaintiff, : 75 Civ. 2392 (CLB)

-against- :

CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., EDWIN J. GLICKMAN,
SALBIAN REALTY CO., INC., SILTAN
DEVELOPMENT CORP., WOAS PROPERTIES
CORP. and MADISON ASSOCIATES, :

Notice of Motion
To DISMISS

Defendants. :

-----X

Please take notice that upon the complaint and amended complaint of Prescott H. Rathborne, the answers to the amended complaint of Edwin J. Glickman, Salbian Realty Co., Inc., Siltan Development Corp., Woas Properties Corp., and Madison Associates (hereinafter collectively "the Madison defendants"), the annexed statement pursuant to General Rule 9(g) of this Court, the annexed affidavit of Thomas H. Moreland, Esq., sworn to October 22, 1975, the annexed affidavit of Edwin J. Glickman, sworn to October 21, 1975, the exhibits annexed to these affidavits, the other documents filed in support of this motion as described in Exhibit "A" annexed, and upon all papers filed and prior proceedings had in this action and in plaintiff's similar previous action in this Court (Rathborne v. Citadel Management Co., Inc., et al., 73 Civ. 612 (CLB)), the undersigned will move this Court, in Room 2703 of the United States Courthouse, Foley Square, New York, New York, on November 24, 1975 at 9:30 A.M., or as soon thereafter as counsel can be heard,

(i) for a judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting each of the Madison defendants summary judgment,

MADISON MOTION TO DISMISS

(ii) for a judgment, pursuant to Rule 12(b)(2) and (5) of the Federal Rules of Civil Procedure, dismissing the amended complaint against defendant Madison Associates for lack of jurisdiction over the person and insufficiency of service of process,

(iii) for a protective order, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, ordering that further discovery not be had against any of the Madison defendants, and that the Notice of Deposition of Madison Associates dated July 25, 1975, be vacated, and

(iv) for such other and further relief, including the award of the costs and disbursements of this action to the Madison defendants, as this Court may deem just and proper.

Nickerson, Kramer, Lowenstein,
Nessen, Kamin & Soll

By 

A member of the firm
Attorneys for defendants
Edwin J. Glickman,
Salbian Realty Co., Inc.,
Siltan Development Corp.,
Woas Properties Corp. and
Madison Associates
919 Third Avenue
New York, New York 10022
(212) 688-1100

New York, New York
October 22, 1975

TO:

Bradley B. Davis, Esq.
Attorney for plaintiff
1235 Park Avenue
New York, New York 10022
(212) 876-1609

Turchin & Topper
Attorneys for defendants
Citadel Management Co., Inc.,
and Urban Relocation Co., Inc.
60 East 42nd Street -- Room 5102
New York, New York 10017
(212) MO 1-0420

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PRESCOTT H. RATHBORNE, :
 :
Plaintiff, : 75 Civ. 2392 (CLB)
 :
-v- : Statement Pursuant
 : to General Rule 9(g)
CITADEL MANAGEMENT CO., INC., et al., :
 :
Defendants. :
-----x

Pursuant to Rule 9(g) of the General Rules of this Court, defendants Edwin J. Glickman ("Glickman"), Salbian Realty Co., Inc. ("Salbian"), Siltan Development Corp. ("Siltan"), Woas Properties Corp. ("Woas"), and Madison Associates ("Madison"), hereinafter collectively referred to as the "Madison defendants," state that there is no genuine issue to be tried with respect to the following material facts:

1. Plaintiff established a tenancy at 200 East 53rd Street, New York, New York (the "building"), in 1965 or 1966.
2. Plaintiff's right to continue in possession of his apartment, after his initial lease or leases expired, was derived solely from the rent control laws and regulations of the State and City of New York.
3. In 1967 the Madison defendants began to assemble for possible redevelopment property located on the block bounded by Second Avenue, Third Avenue, East 52nd Street and East 53rd Street, New York, New York (the "block").

MADISON 9-G STATEMENT

4. On February 5, 1971, the Madison defendants acquired the fee title to the property on which the building was located.

5. Throughout plaintiff's tenancy in the building, the building was subject to a net lease running to 1993 under which the lessee was 873 Third Avenue Corp. ("873 Corp."), an entity unrelated to the Madison defendants. Further, the first floor of the building was subject to a commercial lease running to 1993 under which the lessee was Munchtime, U.S.A., Inc. ("Munchtime"), also unrelated to these defendants. Throughout his tenancy plaintiff paid his rent, and looked for maintenance and repair of the building, solely to 873 Corp. and not to the Madison defendants.

6. By reason of the existence of the long-term lease mentioned in paragraph 5 above, throughout plaintiff's tenancy the Madison defendants had no legal or practical way of demolishing plaintiff's building and including its site in any redevelopment project even if plaintiff vacated his apartment.

7. Throughout his tenancy in the building, plaintiff had no contact or communication with any of the defendants, including Citadel Management Co., Inc. ("Citadel"), and Urban Relocation Co., Inc. ("Urban"), except for one meeting with defendant Glickman on September 7, 1972. At that meeting, plaintiff did not protest or even mention any of the matters which are claimed in the amended complaint to have "constituted harassment of plaintiff by defendants" (¶10).

8. At no time prior to receipt of plaintiff's letter dated November 20, 1972, did the Madison defendants learn from any source of plaintiff's complaints concerning any of the matters alleged in the amended complaint.

9. At no time during plaintiff's tenancy did the Madison defendants receive or learn of any complaints of harassment by any tenants on the block.

10. To the limited extent that the allegations of the amended complaint are true, all of the alleged actions of and conditions created by the Madison defendants had occurred or existed prior to May 1, 1972, and plaintiff had full knowledge of all such actions and conditions prior to May 1, 1972.

11. The defendants did not refuse to maintain properties on the block, as alleged in the amended complaint.

12. The defendants did not threaten any tenants who refused to vacate their apartments on the block with physical or financial injury, as alleged in the amended complaint.

13. The Madison defendants did adopt a policy of not re-renting vacant apartments or stores on the block, since they expected soon to commence their redevelopment project. This policy did not affect plaintiff's building because of the long-term 873 Corp. lease.

14. The defendants did post some signs on the block announcing the policy of not re-renting vacant space. No such signs were posted on plaintiff's building since this policy did not affect that building.

MADISON 9G STATEMENT

15. The defendants did place tin shields on vacant buildings on the block in order to seal the buildings as required by Section C26-80.0 of the Administrative Code of the City of New York. No tin was applied to plaintiff's building, and the tinued building on the block nearest to plaintiff was 4 or 5 buildings removed from plaintiff's building.

16. The Madison defendants did make available to Odyssey House some vacant buildings on the block for use in its drug rehabilitation program. Mr. Glickman, a member of Odyssey House's Board of Advisors, was actively involved in Odyssey House activities and also made available to Odyssey House other buildings not located on the block.

17. In light of the drug-free nature of the Odyssey House program, the assurances given by Odyssey House that its program participants on the block would be carefully supervised, and the limited number of Odyssey House program participants to be located on the block (80 in total, including only 30 patients under active care), the Madison defendants had no reason to believe and did not believe that the location of Odyssey House facilities on the block would cause plaintiff or anyone else any inconvenience or distress.

18. Throughout plaintiff's tenancy on the block the Madison defendants received no notice, from plaintiff or any other source, of any improper behavior by any Odyssey House program participants on the block, or of any unfavorable conditions on the block caused by the Odyssey House facilities. There were,

in fact, no such unfavorable conditions, and, at the most, very isolated incidents of improper behavior.

19. Plaintiff has admitted, in sworn testimony, that the condition of the block did not deteriorate materially from 1967 (the year in which the Madison defendants began their assemblage) to 1972, when plaintiff vacated his apartment.

20. Any deterioration in the condition of the block, other than the inevitable and trivial indications by reason of the signs and tinning that redevelopment was imminent, was not caused by Odyssey House or any activities of the Madison defendants, but by other causes such as the existence of a poorly supervised methadone clinic located across the street from plaintiff's building.

21. Plaintiff vacated his apartment on or about November 17, 1972.

22. Plaintiff has admitted, in sworn testimony and statements, that he vacated his apartment because of abusive acts taken against him, allegedly, by 873 Corp., Munchtime and their principals.

23. The Madison defendants had nothing to do with the alleged abusive acts referred to in paragraph 22 above.

24. Neither the Madison defendants, Citadel nor Urban engaged in any conduct which reasonably could be deemed to have constituted harassment of plaintiff, and these defendants did not authorize, encourage or know of any such conduct toward plaintiff by any other person or entity.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRESCOTT H. RATHBORNE,

Plaintiff,

-against-

CITADEL MANAGEMENT CO., INC.,
et al,

Defendants.

75 Civ. 2392 (CLB)

OPPOSING 9(g) STATEMENT

TO MADISON MOTION

The following items set forth in the 9(g) statement filed by the moving party are not admitted by the plaintiff, and there is a genuine issue to be tried concerning each of them:

Item 6

Item 8

Item 9

Item 10

Item 11

Item 12

Item 13 insofar as it claims to have had no effect upon plaintiff's building

Item 14 insofar as it claims to have had not effect upon plaintiff's building

Item 15 insofar as it claims that the New York City Administrative Code requires tinning

Item 17

Item 18

Item 19

Item 20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PRESCOTT H. RATHBORNE, :
 : 75 Civ. 2392 (CLB)
Plaintiff, :
 :
-v- : Affidavit
 :
CITADEL MANAGEMENT CO., INC., :
et al., :
 :
Defendants. :
 :
-----x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Edwin J. Glickman, being duly sworn, deposes and
says:

1. I am a defendant in this action, a partner in
defendant Madison Associates ("Madison"), and an officer of
defendants Salbian Realty Co., Inc. ("Salbian"), Siltan
Development Corp. ("Siltan"), and Woas Properties, Inc.
("Woas"), (collectively "the Madison defendants"). I make
this affidavit in support of the motion of the Madison de-
fendants for summary judgment, and in the alternative for
a protective order against further discovery. Madison also
moves for dismissal of the amended complaint as against it
since it has never been served with either that pleading
or a summons.

Protective order

2. We seek a protective order against further
discovery because of the full discovery plaintiff conducted
in his previous action ("Rathborne I") in this Court against
myself, Salbian and others, as more fully developed in the

GLICKMAN SUPPORTING AFFIDAVIT

accompanying affidavit of counsel. Although Woas, Siltan and Madison were not defendants in that action, I was the person in active charge of the activities of these entities with respect to the assemblage of which plaintiff complains. These entities simply have no knowledge concerning the facts relevant to this action beyond my own knowledge, which I gave at my deposition in Rathborne I. Likewise, no documents requested by plaintiff in Rathborne I were withheld because there were in the possession of Woas, Siltan or Madison.

3. I believe it would be unfair to burden me or the Madison defendants with a second, repetitious round of discovery in this action given the full discovery had by plaintiff in Rathborne I.

The assemblage

4. In this action plaintiff seeks to recover millions of dollars of damages allegedly sustained as a result of a campaign of "harassment" he claims was conducted against him and other tenants by the defendants in the course of assembling property for future redevelopment in the Manhattan block bounded by Second Avenue, Third Avenue, East 52nd and East 53rd Streets (the "block"). Plaintiff, a former tenant in a rent-controlled apartment located on the block at 200 East 53rd Street (the "building"), claims to have been forced to vacate his apartment in November 1972 because our activities had made the block "uninhabitable."

5. Plaintiff's allegations have no basis in fact. Not only did we never harass plaintiff, we had no contact with him whatsoever except for one meeting I held with him at his request in September 1972. At that meeting plaintiff complained neither about any harassment nor about any conditions

GLICKMAN SUPPORTING AFFIDAVIT

on the block. Thus if there were any conditions on the block requiring correction, and to this day I am not aware of any, plaintiff gave us no notice of them and thus no opportunity to correct them.

6. In 1967 Madison began to try to assemble property on the block for possible future development. We had no specific plan in mind, but felt that the location was a desirable one and intended to decide on a specific project in light of the market conditions prevailing when and if we were able to complete the assemblage (13).^{*} We acquired a number of properties on the block, using nominee corporations wherever possible to try to keep our acquisition prices within reason.

7. On February 5, 1971, through Woas, we acquired the fee title to plaintiff's building. The title later was transferred to Siltan and then Salbian (6-7). The entire building had been net leased by a prior fee owner to 873 Third Avenue Corp. ("873 Corp."), the principal of which was Mr. Sol Garfinkel (11). The 873 Corp. lease did not expire until 1993, and 873 Corp. in turn had subleased to 1993 commercial space in the first floor of the building to a fast food operation known as "Munchtime U.S.A." (26-27).

Our disinterest in
plaintiff's tenancy

8. We could not, of course, utilize the site of plaintiff's building in our development plans unless we were able to acquire the 873 Corp.'s long-term net lease and the Munchtime sublease. Although from time to time we did attempt to negoti-

^{*} Throughout this affidavit, where appropriate, I will cite to the pages of my deposition given in Rathborne I, which is being filed in support of this motion.

ate a purchase of the 873 Corp. lease, we never succeeded in doing so (24-26, 29). Thus throughout plaintiff's tenancy in the building, right up to the time he moved in November 1972, Mr. Garfinkel's 873 Corp., Madison's arm's length lessee, continued to collect plaintiff's rent for its own account, and remained responsible for maintenance and repair of the building (10-12).

9. It should be obvious that we had no interest at all in whether or not plaintiff remained in possession of his apartment, as I flatly told plaintiff at my one meeting with him in September 1972. In view of 873 Corp.'s long-term lease we could not demolish the building and make use of the property on which it was located. Indeed, even if we had been able to purchase the 873 Corp. lease and the Munchtime sublease we still would not have been able to make use of the building's site unless we also were able to purchase a similar long-term net lease, running to 1988, held by the commercial tenant at 869-71 Third Avenue, next door to plaintiff's building. Until these various leases were acquired, the only possible value of these properties in any redevelopment project would lie in their unused zoning "air rights", with the existing buildings left standing and the existing tenancies continuing.*

10. Thus at no time did we have any conceivable reason to harass plaintiff: his removal from his apartment stood to gain us not one red cent. Nor, as I will now show, can any of our activities in the course of the assemblage rationally be

* The Zoning Resolution of New York City permits a certain maximum floor area to be constructed on any given parcel of land. To the extent that the building existing on the parcel does not utilize all of this permitted floor area, the unused floor area may, under certain conditions, be included in a new building constructed on an adjacent parcel of land in the same ownership (48-49).

deemed to have "constituted harassment of plaintiff" (Amended complaint ¶8).

Defendants Urban and Citadel

11. The assemblage of the block was the first one in which either I or Madison had been involved which required the management of a substantial number of residential apartments and the eventual relocation of the tenants in those apartments. Because we were inexperienced with this type of situation, we retained two companies which were expert in this field, defendants Citadel Management Co., Inc. ("Citadel"), and Urban Relocation Co., Inc. ("Urban"), both operated by Mr. Seymour Shapiro (17-19).

12. As a matter of course, we entered into identical form contracts with Urban and Citadel with respect to every parcel we acquired in the course of the assemblage; the one relating to plaintiff's building was marked Exhibit "A" at my deposition. This form contract provided for Citadel to manage the buildings for a fee of 5% of the net rent collected, and for Urban to relocate tenants for a fee of \$500 per tenant. Urban was authorized to spend up to \$2,000 or \$3,000 per tenant either to find suitable relocation accommodations for tenants or to pay the tenants themselves as an inducement to find their own relocation facilities (28).

13. The standard form contract had only limited immediate applicability to buildings, such as plaintiff's, which were subject to a long-term net lease. There could be no relocation carried on by Urban in these buildings since we were not in possession of the building, and indeed any approach to tenants might well have been an improper interference with the rights of the lessees of these buildings (10-12, 25-26).

~~SECRET~~ ~~CONFIDENTIAL~~

14. Likewise, Citadel had no direct responsibilities for the maintenance and repair of these net leased buildings, these duties remaining in the lessees. Citadel's only functions were to collect the lessees' rent payable to us and to maintain a liaison with the lessees in the event we received notice of any property violations requiring their action (10-12).

15. Thus, Urban and Citadel never had any contact with plaintiff or the other tenants in his building. Indeed, so slight were their responsibilities in connection with plaintiff's building that generally Urban and Citadel were paid less than the monthly management fee stipulated in their form contract (21-24).

The rest of the block

16. Plaintiff's complaint makes allegations that we or Urban and Citadel harassed other tenants on the block, and indeed he even makes allegations relating to other unnamed blocks in the City. While I understand that these allegations are legally irrelevant since they do not pertain to plaintiff himself, I wish to note they are also untrue. Never did I or any of the Madison defendants receive any complaints of harassment from tenants concerning this block, other than plaintiff's fantasies after he vacated (16-17, 29, 43). The tenants, as well as the active community groups in the area, knew where to find us if they did have any such complaints, for from time to time we did receive requests to have routine repairs made, requests we always responded to promptly (53-54, 59-60).

Tinning

17. One of the few things which plaintiff alleges that we are responsible for is the placement of tin shields

in the windows of buildings on the block which were vacant. This procedure was followed at the suggestion of Mr. Shapiro based on his knowledge of the City regulations which required such a procedure. The omission of this tinning step would create a great danger of vandalism or fires, which is precisely the reason the law requires it (18).*

18. To be sure, we had the option of re-renting vacant stores and apartments, and plaintiff claims our failure to do so somehow "constituted harassment" of him (Amended complaint ¶¶ 8, 10). But we were in the process of preparing this block for redevelopment. We could not justify re-renting vacant space, and thus incurring both the added costs of maintenance and the added responsibilities of acting as a landlord, in buildings which we anticipated would soon be demolished.

19. Our decision to leave the buildings vacant, and to tin them in the manner required by law, was thus only one of plain economic common sense. This policy could not have conceivably affected plaintiff in any way since his building, subject to the 873 Corp. lease, was neither vacated nor tinned.

Urban's signs

20. Plaintiff also complains of the "large and ungainly" signs posted by Urban and Citadel on some buildings

* I am informed by counsel that the City's Administrative Code, § C26-80.0, reads in pertinent part as follows:

"A vacant building which is not continuously guarded shall have all openings sealed in a manner approved by the commissioner, and it shall be the duty of the owner thereof promptly to make any repairs that may be necessary for the purpose of keeping such building sealed."

GLICKMAN SUPPLEMENTAL AFFIDAVIT

on the block -- not plaintiff's -- announcing the policy that no space would be re-rented. The signs were posted at the suggestion of Mr. Shapiro, who told me it was the standard procedure (18-19). The signs were entirely proper and factual. Far from "constituting harassment", they were one guaranty that no harassment would occur. By openly revealing the assemblage and Urban's identity the signs, we felt, would tend to deter any improper activity, as well as discouraging any inquiries concerning the vacant space.

Odyssey House

21. Plaintiff's final allegation which has some relation to the Madison defendants concerns our provision of facilities for Odyssey House in several of the vacant buildings which we had purchased on the block. Throughout his tenancy plaintiff never complained to us concerning any of these Odyssey House facilities, including during his conference with me in September. In any event, his complaints are unjustified to my knowledge; if they had any justification we could easily have taken corrective action had this been requested.

22. Odyssey House was and still is engaged in the rehabilitation of former drug users through the maintenance of "therapeutic communities" in which these former users reside and work, under close supervision by a trained staff, and receive psychiatric treatment. Odyssey House's programs are funded principally by the federal, state and local governments, and its Board of Advisors has included such distinguished citizens as Senators Javits, Buckley and Kennedy and Judge Abraham Gellinoff.

GLICKMAN SUBORATING AFFIDAVIT

23. Both I and my wife had an active interest in the programs of Odyssey House, which arose from my acquaintanceship with Dr. Judianne Densen-Gerber, its Executor Director. I had visited Odyssey House's facilities in the City and had been impressed by its program, and in 1971 I became a member of its Board of Advisors (32-34).

24. Dr. Densen-Gerber knew of Madison's development activities and inquired into the possibility of Odyssey House utilizing some vacant buildings in our assemblages in the period before we were ready to proceed with demolition. Since the use of these buildings for a worthy program such as Odyssey House was more socially useful than simply tinning them up, and involved no added expense, I agreed to make some facilities on the block available (32-34).^{*} Odyssey House used the facilities free of charge, but subject to removing upon thirty days notice.

25. The facilities established by Odyssey House on the block consisted of a series of storefronts along Third Avenue, a staff residence building at 210 East 53rd Street, and smaller patient residences on East 52nd Street. The Third Avenue storefronts consisted of a thrift shop, an information office, a clothing store, and also one specialty shop operated by a private merchant who divided his profits with Odyssey House (34-35). I was told that Odyssey House program participants using these facilities would be limited to persons who had renounced the use of drugs and who in fact were not using them, and that the participants would be carefully supervised.

^{*}Among the properties in our other assemblages which we allowed Odyssey House to use were storefronts on East 57th Street between Lexington and Park Avenues. In one of these was located an Odyssey House art gallery supervised by my wife (33, 37).

~~CONFIDENTIAL - SECURITY MATTER~~

To this day I am unaware of any instance where these assurances were breached, or of any improper conduct on the block by an Odyssey House program participant (34, 38).

26. Plaintiff's only specific complaints seem to be against some staff residents at 210 East 53rd Street, the building adjacent to his own. He claims, counsel informs me, that on a few occasions objects were thrown at him or taunts hurled at him, either while he was on the street or in his roof garden, which he believes came from the windows of the Odyssey House building. I have no way of knowing whether these specific incidents occurred or not, although they are contrary to everything else I know about Odyssey House and its presence on the block. But certainly if plaintiff had ever called the incidents to our attention we would have demanded that Odyssey House promptly investigate them and either make sure they did not recur or promptly vacate the building. Plaintiff gave us no opportunity to take corrective action since he gave us no notice of the alleged incidents; yet, after vacating his apartment he now sues us for millions of dollars because, in part, of these incidents.

27. Plaintiff also makes various allegations of a general character to the effect that our assemblage and the Odyssey House facilities resulted in a general deterioration of the block so that it became "uninhabitable", thus forcing plaintiff to vacate his apartment (Amended complaint ¶ 9). There is no truth to plaintiff's allegation. With respect to Odyssey House, to my knowledge it carried out in every respect its commitment to supervise carefully its program participants to insure that none were using drugs or were acting in any way detrimental to the neighborhood. The best evidence that Odyssey House did properly supervise its program participants is the fact that we never received even one complaint about the pre-

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sence of Odyssey House on the block (38) -- except of course from plaintiff after he vacated his apartment.

28. There was one unfavorable drug-related influence on the character of the neighborhood in which the block was located, but it was unrelated to Odyssey House or any of our activities. A methadone clinic had been established across the street from plaintiff in a building on East 53rd Street, with which we or Odyssey House had nothing to do. This clinic apparently made little attempt to supervise the addicts who visited its facilities. I know that Odyssey House complained about the clinic, and it finally was closed after plaintiff had left the neighborhood.

29. Even with this nearby clinic, however, to my knowledge the conditions on the block remained entirely "habitable" throughout plaintiff's tenancy. We made every effort to keep our properties in the block well maintained and promptly made any necessary repairs (62-63). Plaintiffs made no complaints at all about the condition of the block during our one meeting or at any other time during his tenancy, although the tinning, the signs and Odyssey House facilities were all in place on the block by the end of 1971. Perhaps he recognized, as opposed to the drafter of his legal pleadings, that the condition of the block never remotely justified the labels "derelict" or "uninhabitable" (Amended complaint ¶ 9).

My conference with
plaintiff--no complaints

30. Mr. Rathborne contacted Madison to arrange a conference with me sometime in September. I do not remember

the reason he gave for requesting the meeting, but in any event I and one of my associates sat down with plaintiff on September 7 at Madison's offices. Plaintiff started out by soliciting our interest in some sort of a financial arrangement by which he would vacate his apartment and give us possession. We told him that we had no possible interest or use for his apartment so long as we were unable to acquire the net lease owned by Mr. Garfinkel's company. Plaintiff then asked if there wasn't a way in which he could be useful in any proceeding we might wish to bring against Mr. Garfinkel such as by testifying or furnishing evidence. We told him we were not intending to bring any litigation against Mr. Garfinkel and thus had no such need for him. The meeting then terminated. Plaintiff made no complaints to us about harassment, no complaints about the tinning or the signs, no complaints about Odyssey House or the condition of the block -- no complaints about anything (41-43). Thus we assumed, I think reasonably, that plaintiff had no such complaints.

The libelous November 20
letter

31. We gave no further thought to plaintiff until the receipt of his shocking letter of November 20 (Exhibit "B" to my answer in this action) accusing us of extreme acts of harassment, which letter he had distributed to the news media and civic associations. This letter was our first inkling that plaintiff had viewed any of our assemblage activities or the Odyssey House facilities as a form of harassment or as detrimental to his tenancy in any other respect. The letter also accused us of involvement with a variety of petty disputes--"specific

acts against me" (p. 2)-- between plaintiff, Mr. Garfinkel, and Munchtime. We, of course, had nothing to do with these disputes; our only contact with Mr. Garfinkel was through a broker in connection with our unsuccessful negotiations to acquire the 873 Corp. lease (24-26). The climax of plaintiff's letter was a scandalous allegation (p. 2) suggesting that I was responsible for several murders of unnamed persons somehow involved in opposing assemblages elsewhere in the City. I was not even involved in the Turtle Bay assemblage specified. So outrageously false and reckless is this letter that I have made it, and a similar October letter which I never received, the basis of counterclaims for libel against plaintiff.

32. Upon receipt of this November letter I dictated a memorandum of what had transpired at our prior September 7 conference with plaintiff (Exhibit "D" at my deposition). Counsel informs me that at his deposition plaintiff confirmed that the memorandum accurately reflects that he did not complain of, or request action concerning, any of the topics asserted as "harassment" in his November letter and the subsequent lawsuits.

Conclusion

33. The Madison defendants are not responsible for plaintiff's repeated disputes with Mr. Garfinkel and others over whom we had no control. We are also not responsible for whatever psychic pressures these disputes placed upon plaintiff, leading him to suspect that our own assemblage activities were part of a conspiracy directed against him. The "full and ample discovery" and trial conducted in Rathborne I have demonstrated that these suspicions have no factual basis. We ask the Court, based on the full record before it, to bring plaintiff's repeated litigations to a final termination, and thus free us from the continued expense and burden of litigating plaintiff's untenable claims.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PRESCOTT H. RATHBORNE,

Plaintiff,

: 75 Civ. 2392 (CLB)

-v-

CITADEL MANAGEMENT CO., INC., et al.,

Defendants.

: AFFIDAVIT
: -----x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Thomas H. Moreland, being duly sworn, deposes
and says:

1. I am associated with the firm of Nickerson,
Kramer, Lowenstein, Nessen, Kamin & Soll, attorneys for
defendants Edwin J. Glickman, Salbian Realty Co., Inc.
("Salbian"), Siltan Development Corp. ("Siltan"), Woas
Properties Corp. ("Woas"), and Madison Associates ("Madi-
son"). I make this affidavit in support of the motion of
these defendants (hereinafter collectively referred to as
"the Madison defendants") seeking, inter alia, summary
judgment pursuant to Rule 56 of the Federal Rules of Civil
Procedure. In the alternative, the Madison defendants seek
a protective order, under Rule 26(c), barring plaintiff from
conducting further discovery against these defendants in
light of the full discovery afforded him in his previous,
almost identical, action in this Court against Mr. Glickman,
Salbian and others: Rathborne v. Citadel Management Co.,
Inc., et al., 73 Civ. 612 (CLB) ("Rathborne I"). Finally,

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Madison, alone, also moves under Rule 12(b)(2) and (5) to dismiss the action, since Madison has not been served with the summons or amended complaint.

This motion
in brief

2. In essence, plaintiff alleges that he was forced to vacate his rent controlled apartment because of a campaign of harassment waged against him by the Madison defendants in the course of attempting to assemble for possible future development the block on which plaintiff lived. Also alleged to have participated in this harassment are defendants Citadel Management Co., Inc., ("Citadel"), and Urban Relocation Co., Inc. ("Urban"), the two companies retained by the Madison defendants to manage their properties on the block and to assist in the relocation of tenants from the block.

3. The facts to be reviewed below, drawn largely from the discovery and trial in Rathborne I* and the accompanying affidavit of defendant Glickman ("Glickman aff."), will demonstrate that there is no evidentiary basis for this action. The harassment campaign existed solely in plaintiff's vivid imagination, colored with a medically verified tendency toward paranoia which apparently resulted from actions by other persons unrelated to these defendants.

4. The simple fact is that the defendants took no action -- good, bad, or indifferent -- relating to the plaintiff: his tenancy was totally irrelevant to their redevelopment plans since the building in which he lived was subject to a long-term commercial lease and thus could not be made part of the redevelopment site. During his tenancy, plaintiff

*Exhibit "A" to this affidavit lists the transcripts and exhibits filed with the Court in support of this motion, which due to their bulk could not be annexed to these papers.

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made no complaint to any of the defendants concerning any of the conditions or actions which he now claims constituted harassment. He had no contact whatsoever with the defendants except for one personal meeting with Mr. Glickman, at which meeting he uttered not one word of complaint concerning the defendants and made not one request for any corrective action concerning the matters alleged in this lawsuit.

5. This affidavit and our accompanying Memorandum of Law ("Mem. Law") will demonstrate that the only activities of the Madison defendants which occurred in fact (rather than in plaintiff's imagination) provide no conceivable support for any part for plaintiff's claim of harassment. In the course of their lease the Madison defendants did only what only sensible developer would do: they refused to re-rent vacant space in the buildings they planned soon to demolish, posted signs announcing the policy of not re-renting, and sealed the vacant buildings in the manner required by law (see ¶¶ 55-57, infra). None of these actions affected plaintiff's building because of its long-term lease (see ¶¶ 48-50, infra). The provision of some vacant space to Odyssey House, arising out of Mr. Glickman's personal participation in its widely respected program, caused no harm to plaintiff; even if it had, it could not be deemed harassment in view of plaintiff's total failure to give notice of any such problems, and an opportunity to correct them, to the Madison defendants (see ¶¶ 58-69, infra).

6. Finally, the Memorandum of law also shows (pp. 38-50) that any conceivable claim of plaintiff, is barred here by his failure to pursue the exclusive statutory remedy for rent control harassment complaints provided by New York law.

MORELAND SUBPARTIN 6
AFFIDAVIT

The motion to
dismiss

7. Plaintiff in his original complaint, annexed as Exhibit "B", named as defendants, among the Madison defendants, only Mr. Glickman and Salbian; they were served with the summons and this firm was retained to represent them. Then plaintiff mailed to this firm his amended complaint, annexed as Exhibit "C," adding as defendants Siltan, Woas and Madison. Madison, thus far, has not been served with the summons or the amended complaint ("Glickman aff. ¶ 1). Thus, pursuant to the affirmative defenses of a lack of personal jurisdiction and insufficient service of process asserted in its answer, annexed as Exhibit "D" (¶ 12), Madison moves to dismiss the action as against it pursuant to Federal Rule 12(b)(2) and (5).

Nature of this
action

8. Plaintiff's amended complaint (Exhibit "C") alleges that plaintiff resided in a rent controlled apartment in a building located at 200 East 53rd Street in Manhattan (the "building") from 1965 through November 1972. The building was located in the block bounded by Second Avenue, Third Avenue, East 52nd Street and East 53rd Streets (the "block") which the Madison defendants were endeavoring to assemble for possible redevelopment. Plaintiff alleges that in order "to cause the tenants on the block including plaintiff, to vacate their premises," the defendants engaged in these activities:

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- "tinning and bricking up buildings and windows to give the block an abandoned appearance;"
- "posting large and ungainly signs indicating [should be "indicating"] that the block was being vacated;"
- "renting or giving a large number of buildings on the block to drug rehabilitation centers (although the area was not a center of drug addiction) in order to bring unsavory persons to the neighborhood;"
- "refusing to re-rent vacated apartments or stores so that the block took on a derelict character;"
- "refusing to maintain properties on the block;"
- "threatening tenants who refused to vacate with physical and financial injury;" and,
- "other diverse improper and illegal means" (Amended complaint ¶ 8).

9. As a result of defendants' actions, plaintiff claims, "the block became so derelict that it was uninhabitable, and plaintiff was forced to vacate his apartment in November of 1972" (Amended complaint ¶ 9). All of this, plaintiff broadly concludes, "constituted harassment of plaintiff by the defendants" (Amended complaint ¶ 10). Damages are sought in the princely sum of \$450,000, including \$100,000 "in psychological damage" (Amended complaint ¶ 11).

10. In the second cause of action, asserted against all defendants except Salbian, Siltan and Woas, plaintiff demands \$5,000,000 in punitive damages based upon this allegation:

"Similar acts to which plaintiff refers in the first cause of action were undertaken by the above defendants for similar purpose against thousands of tenants on this block and on other blocks around New York City, causing said tenants great anguish and financial loss" (Amended complaint ¶ 13).

11. This second cause of action in its entirety, and that part of the first cause based on alleged harassment of

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tenants other than plaintiff, plainly state no claim on their face. Plaintiff cannot recover either compensatory or punitive damages by reason of any actions taken against persons other than himself (see Mem. Law, pp. 18-19). The allegations are blatantly false, as we show below. Indeed, with respect to the second cause of action, the Madison defendants had never even been involved in a single assemblage of property in "other blocks around New York City" in which any substantial number of tenants had to be relocated (Glickman aff. ¶ 11).

12. The answers of all the Madison defendants, annexed as Exhibits "D" and "E," deny the material allegations of the complaint, except that it is undisputed that the Madison defendants, as was public knowledge as early as 1970 or 1971, were engaged in an effort to assemble property in the block for possible future development. Defendant Glickman also has asserted counterclaims for defamation (Exh. "E," ¶¶ 13-27), which are not involved in this motion.

The full discovery in Rathborne I:
the need for a protective order
in this action

13. The vague allegations of the amended complaint are not to be judged simply on their face, for plaintiff already has conducted full discovery concerning his virtually identical allegations in the Rathborne I complaint, annexed to this affidavit as Exhibit "F" (¶¶ 17-19). In Rathborne I, after all defendants had been deposed and had made document production, plaintiff proposed to discontinue the action without prejudice against Mr. Glickman, Salbian, Citadel and Urban. These defendants accepted the "without

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prejudice" proposal, but only after bargaining for and obtaining a stipulation, inter alia, that plaintiff had completed his discovery. Thus the stipulation of settlement and order of discontinuance, filed on August 27, 1974*, and annexed as Exhibit "G," contains this admission by plaintiff:

"Plaintiff has been afforded full and ample discovery against each of the defendants Citadel, Urban, Glickman and Salbian with respect to the subject matter of the complaint and the subject matter of the counterclaim asserted by defendant Glickman" (§ 2).

14. It is on the basis of this "full and ample" discovery in Rathborne I that the Madison defendants move, in the alternative, for a protective order against further discovery in this action, including vacation of the Notice of Deposition of Madison dated July 25, 1975, and annexed as Exhibit "H."** If any part of plaintiff's amended complaint survives this summary judgment motion at least the Madison defendants should be protected from further necessarily duplicative and harassing discovery in this second action brought on the same allegations as Rathborne I (see Mem. Law, pp. 10-12). Indeed, even if the Rathborne I discovery had not been "full and ample" the stipulation of plaintiff's counsel that it was -- part of the bargained for consideration for the "without prejudice" discontinuance -- would bar any such contention here (Mem. Law, p. 10).

15. Although Siltan, Woas and Madison were not named defendants in Rathborne I, they have no knowledge or documents

*Plaintiff continued to trial against the remaining defendants and lost (see §§ 41-43, infra).

**This deposition has been adjourned on consent until the determination of this motion.

concerning the relevant facts independent of Mr. Glickman, their principal officer (Glickman aff. ¶ 2). Thus through Mr. Glickman these entities also were subjected to full discovery in Rathborne I* and they too -- or more accurately Mr. Glickman -- should not be burdened with a second round of discovery here.

16. It is also principally on the basis of the Rathborne I discovery that the Madison defendants now move for summary judgment. The Court has before it a complete factual demonstration of the imaginary basis of plaintiff's alleged harassment campaign. Plaintiff had every opportunity during Rathborne I to discover facts to support his suspicions of harassment; we will now show that he did not because no such facts exist.

Plaintiff Prescott Rathborne

17. Plaintiff Rathborne, a bachelor in his late thirties, describes himself as an "interdisciplinary scientist" (7)** engaged in the study of "sensory research and develop-

*During Mr. Glickman's deposition ("Glickman dep."), filed in support of this motion, he was asked many questions which concerned, or included within their scope, Siltan, Woas and Madison (e.g., Glickman dep. 5-9, 22-23, 29).

**Page citations with no further reference are to plaintiff's deposition in Rathborne I which has been filed with the Court, having been signed by the deposition officers, pursuant to Federal Rule 30(e), upon plaintiff's refusal to sign it. Page citations preceded by the word "Trial" are to the filed transcript of the Rathborne I trial (not involving the present defendants) conducted before visiting Judge Solomon. Judge Solomon described plaintiff's performance at his deposition this way:

"I see a man who is evasive and who refuses to answer questions and who asked for explanation constantly and who avoids answering questions and who asks the question(er) to define his terms constantly" (Trial 196).

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ment" (8), primarily as President of an entity called Multi-sensory Inter-National Development Corporation, or "MIND" for short (7). Perhaps unsurprisingly, plaintiff's principal means of support during his residency in New York was inherited wealth (10-11).

18. In 1965 or 1966, plaintiff established a tenancy in an apartment, and adjoining roof garden, at 200 East 53rd Street. His tenancy was protected by the rent control laws and regulations, and he entered into a lease in the statutory form with 873 Third Avenue Corp. ("873 Corp."), an entity unrelated to the Madison defendants and controlled by one Sol Garfinkel. Plaintiff's lease expired prior to 1972, and he continued to hold over as a purely statutory tenant (Trial 3-4; 12-13, 580-81, 586). Mr. Garfinkel's 873 Corp. held a long-term net lease on the building extending to 1993, and 873 Corp. in turn had subleased to 1993 the ground floor of the building to an entity known as "Munchtime U.S.A.," which operated a fastfood store. The Madison defendants acquired fee title to the building in February 1971 but never succeeded in acquiring the 873 Corp. or Munchtime leases (Glickman aff. ¶7).

19. It is clear that the only arguably harassing actions taken against plaintiff stemmed from his repeated and petty disputes with Mr. Garfinkel and Munchtime.* However, although these disputes did not involve even remotely the Madison defendants, they in fact explain plaintiff's cur-

*These disputes were the subject of the Rathborne I trial before Judge Solomon who held, inter alia, in the decision annexed as Exhibit "I", that plaintiff had failed to prove "intentional misconduct" by Garfinkel or 873 Corp. (Exh. "I," pp. 2-3).

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rent harassment claim (assuming that plaintiff believes the claim) against these defendants: the heated disputes with Garfinkel and Munchtime made plaintiff so paranoid that, his imagination fueled by a magazine article criticizing the Madison defendants' assemblage, he began to attribute the actions of Garfinkel and Munchtime to a vast conspiracy directed against him by defendant Glickman (¶¶ 44-46, infra). Thus, we review the Garfinkel-Munchtime background in some detail.

Rathborne, Garfinkel
and Munchtime: their
constant battles

20. By all accounts plaintiff is a very difficult fellow to get along with.* Judge Solomon, largely exempting Garfinkel from blame for his recurrent battles with plaintiff, found that plaintiff had been "a constant source of irritation and continually provided Garfinkel" (Exh. "I," at 2-3); plaintiff was a "difficult" and "very exasperating person" (Trial 320). But wherever the fault lay, there is no dispute that plaintiff's relationship with Garfinkel was "bitter" throughout most of his six year tenancy, and became increasingly so as time wore on (e.g., 259). Garfinkel claimed that, throughout plaintiff's tenancy, at least once a month he would get "livid with rage" against plaintiff (Trial 303).

21. The bitterness was well established at least by October, 1966, less than a year after plaintiff had moved into his apartment -- and before the Madison defendants had even decided to begin their assemblage (Glickman aff.

*Plaintiff had been discharged from the Army, after a few sessions with an Army psychiatrist, because of his "inability to adjust" (Trial 37-38).

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¶ 6). By this time plaintiff and Garfinkel were locked in litigation over plaintiff's refusal to pay rent because of some 43 complaints against Garfinkel, including "constant burglaries [due to landlord's breach of contract]" (Exh. "J" (1)* annexed). There were some 40 burglaries of plaintiff's apartment during the first 2 years of his tenancy, and "numerous incidents of derelicts sleeping in the hallways" (13).

22. By October 1970, plaintiff was recording his belief that he was the victim of "constant and apparent harassments" (Exh. "K" (86) annexed), and felt he was "under seige" (Trial 40). Although plaintiff has since attributed these harassments to a supposed conspiracy against him begun by Mr. Glickman around this late-1970 period (95, 105, 108, 115-21, 414, 523), the real cause was more mundane: the malfunction of two air conditioners.

-- the roof garden and the
two air conditioners

23. Plaintiff's pride and joy was an elaborate (at least by his version) roof garden. However, also located on the roof were two air conditioners serving the Munchtime U.S.A. premises. Garfinkel and Munchtime claimed they had been placed on the roof with plaintiff's consent, but such consent, if any, was short-lived. There ensued a continuing battle over Munchtime's insistence, supported by Garfinkel, on gaining access to its air conditioners to make necessary repairs, and plaintiff's desire to increase the privacy

*Where a document annexed as a lettered exhibit was also marked as an exhibit at a Rathborne I deposition, the deposition exhibit number is indicated in parenthesis to aid the Court's review of the deposition.

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of his roof garden. Plaintiff came to view the "hundreds" of requests by Munchtime or Garfinkel for access to the air conditioners (Trial 27, 30, 72-73) as "harassment" designed to "force me out of this apartment" (154-58).

24. While these roof disputes were heated at least as early as October 1970 (Exh. "K" (86) annexed), they really got out of hand in 1972 and became "far, far more bitter" (259). The result was a rising crescendo of litigation between plaintiff and Garfinkel, halted only by plaintiff's decision to seek sanctuary in New Orleans. We can do little more than highlight the rather incredible course of events in 1972, with citations to the Rathborne I record for further details.

-- the courthouse encounter

25. In early February 1972, after one of their recurrent court battles over rent payments, Garfinkel and plaintiff had an angry confrontation ("You know, Prescott, one of these days, I'm going to hit you with a bat" -- Trial 31-32, 50-51, 303-04); "You're going to get it" -- 261-63). On other occasions during the year Garfinkel bluntly told plaintiff:

"I want you out of here I'm going to see that you get out of here. You got to go" (Trial 93).

-- the rooftop encounters

26. In May, 1972, after his written requests in March for removal of the air conditioners (Exhs. 5, 7, 8 and

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9)* had been ignored, plaintiff commenced an action in state court seeking, inter alia, an order that they be removed:

Rathborne v. Munchtime, U.S.A., Inc., and 873 Third Ave. Corp., Sup. Ct., N.Y. Co., Index No. 13475/72 (Exh. 11).

Twice that month, plaintiff discovered some Munchtime people on his roof. He threatened the owner of Munchtime, Alexander Avolon, with violence if such intrusions continued -- "one could be shot for trespassing" (Exh. 12; 162-71), a reference to plaintiff's publicized possession of shotguns (241-45) -- and summoned the police. Either on this or a similar later occasion, the police told plaintiff in essence that he might be the one injured if the silliness continued (see 76-78, 83-85, 559-61).

27. The disputes did turn violent in June when, according to plaintiff, Garfinkel ordered air conditioning repairmen physically to remove plaintiff from their path (452-53) -- "shove him down, push him" (Trial 29) -- in order to get to the machines. Less physical disputes arose over Garfinkel's petition to decontrol a part of plaintiff's apartment, on the ground it consisted of 2 separate apartments (Exh. 44 -- the petition ultimately was granted (Exhs. 60-61)), and his insistence that plaintiff remove, as ordered by the Fire Department, a bolt preventing access from the roof to the apartment (Exhs. 13, 17).

*Exhibits to the Rathborne I depositions not annexed have been filed with the Court together with the full deposition transcripts. The exhibits introduced at the Rathborne I trial, none of which are cited in that form in these papers, are part of the record in the Rathborne I appeal pending in the Court of Appeals (dkt. 75-7313).

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-- the door
axing

28. As the temperature rose so did the anger of the Munchtime people at being prevented by plaintiff from repairing their air-conditioning equipment. Or so, at least, one may infer from subsequent events. On June 27 an unidentified individual repeatedly hacked at plaintiff's apartment front door with an axe or some similar implement (Exh. 23; 241-64). An angry confrontation soon ensued between plaintiff and Garfinkel in which the latter made some remark like "this is only the beginning if you don't cooperate with these people" (Trial 99-100; see Trial 32, 52).

-- the kitchen
grease

29. Plaintiff now acquired for added protection a Doberman pincher. The very day the dog arrived, July 14, "kitchen grease" was smeared on plaintiff's apartment door on two occasions by persons unknown (Trial 53; Exh. 39; 502-04). As anyone who has patronized their establishment realizes, Munchtime does have an ample supply of kitchen grease. The police were called and were told that the incident reflected "harassment by landlord" (Exh. 39).

-- the electricity
dispute

30. Meanwhile, plaintiff's own air conditioner was causing him problems: it repeatedly blew his fuses. Access to the fusebox could be gained only through Munchtime's premises, and Munchtime, so Judge Solomon found, denied plaintiff access to the fusebox in retaliation for

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his refusals to allow repairmen access to the Munchtime air conditioners on the roof (Exh. "I," at 3). Throughout the summer plaintiff continued to be vexed by recurrent interruptions in his supply of electricity, which he attributed to "harassment" (275-77, 286-89, 298-302).

-- the state court and
city agency "harass-
ment proceedings"

31. In July plaintiff filed two proceedings seeking redress against these various acts of harassment. On July 14, by order to show cause in his state court action, he sought an injunction against 873 Corp's "acts of harassment against plaintiff" (Exh. "L" (18-A) annexed). On July 28 Justice Frank denied plaintiff relief, except for ordering that his repairmen be given access to the fusebox below Munchtime, partly on the ground that other "administrative remedies" were available to plaintiff as a rent control tenant (Exh. "M" annexed). By that time, plaintiff already had invoked such a remedy. On July 21 he had commenced an harassment proceeding -- against only 873 Corp. -- with the New York City Housing and Development Administration, Office of Rent Control ("Rent Control Administration"), by filing a "statement of violations" (Exh. "N" annexed).*

-- the taunting and
anonymous incidents

32. These counterattacks did not stop plaintiff's problems, and, according to him, he continued to be harassed.

*By this time plaintiff, as reflected in Exhibits "L" and "N," had begun to attribute the apparent acts of 873 Corp. and Munchtime to the Madison defendants (see ¶ 46, *infra*), though he never gave these defendants any notice of such suspicions (Glickman aff. ¶ 5, 30-31).

MODEL AND SUPPORTING AFFIDAVIT

Garfinkel's lawyer, Max Steinberg, threatened plaintiff, so he claims (Trial 32-33). "Various unnamed characters" (453) would congregate outside Munchtime and, as plaintiff walked by, would taunt him, often with the encouragement ("that's him") of Avolon, Garfinkel or Steinberg to "bait Prescott" (453-54; Trial 55). Strangers would cross the street with plaintiff, which "might be baiting" (455). Other strangers, "dressed usually very nice," would appear at plaintiff's door pretending to bear gifts ("come on out and get it") (Trial 34). Multiple anonymous phonecalls wakened plaintiff from his sleep (Trial 33-34). Finally, various large and small objects began to fall to earth near where plaintiff was standing, either on the street or in his roof garden, the origin of which he believed to be the Odyssey House building next door, although he never saw who was dropping the objects (477-90).*

-- the meeting with
Mr. Glickman: no
mention of harass-
ment

33. In the midst of his time of troubles plaintiff, at his request, had a meeting with Mr. Glickman on September 7. If plaintiff attributed his troubles to Mr. Glickman he behaved most strangely at this meeting: as he has admitted, he made no complaints about harassment or anything else, and instead tried to involve Mr. Glickman in his disputes with Mr. Garfinkel (see ¶¶ 35-36, infra).

*At one time plaintiff appears to have complained to the police about Odyssey House, and in October 1972 he also complained to Odyssey House itself (Exhs. 43, 75, 76). However, he never complained about Odyssey House facilities to the Madison defendants (Glickman aff. ¶21).

MADISON SUBORDINATING AFFIDAVIT

-- the meeting with
Mr. Garfinkel:
"stop harrassing
me"

34. Plaintiff's meeting with Mr. Garfinkel one week later was in notable contrast. By this time these two ancient adversaries had litigations pending in about every forum except this one: there were plaintiff's air conditioner/harassment action in state Supreme Court, plaintiff's harassment proceeding in the Rent Control Administration, Garfinkel's petition to decontrol in the Rent Control Administration and Garfinkel's various non-payment petitions in the Civil Court (e.g., Index No. L&T 66386, filed in August -- Exh. 55).^{*} Just how were all these matters to be resolved, plaintiff was asked. He replied, "It would end if you would stop harassing me" (Trial 176).^{**}

-- plaintiff departs
because of Garfinkel's
"harassment"

35. But the harassment did not stop, according to plaintiff; the Garfinkel inspired incidents continued in September, October and November (Trial 31). Finally, plaintiff vacated his apartment and moved to Louisiana in November, 1972. Mr. Garfinkel must have been ecstatic; Mr. Avolon of Munchtime was "exceedingly happy -- I knew I could fix my air conditioner" (Trial 226). The Madison defendants, needless to say, could not have cared less.

^{*}Soon to come in October was a Criminal Court proceeding relating to the roof door bolt (see ¶27, supra) (Exh. 71).

^{**}The solution proposed by Mr. Steinberg was "Mr. Rathborne gets out of there" (Trial 176). To a suggestion by plaintiff's counsel that 873 Corp. offer plaintiff a generous payment to vacate, an offer made on the theory that it had an interest in the assemblage, Mr. Steinberg replied that "We are not a part of that.... We just want that [S.O.B.]... out" (Trial 177-78).

MORRISLAND SUPPORTING AFFIDAVIT

36. Why did he leave? Plaintiff's brief on the appeal in Rathborne I summarizes the record nicely:

"Finally in November, 1972, because of the harassment of Garfinkel and 873 [Corp.] plaintiff-appellant was driven to vacate his apartment" (Brief of plaintiff-appellant at 3).

So plaintiff and his present attorney (Trial 162) had testified at the trial against Garfinkel and 873 Corp:

"Q. Mr. Rathborne, other than for the acts that happened to you in this case, would you have left that apartment?

"A....I would not have left for the rest of my life. I would have kept it" (Trial 60).

So plaintiff swore again on April 15 of this year in his petition, annexed as Exhibit "O," demanding that the Rent Control Administration reopen his harassment proceeding against 873 Corp. based on the "very acts of harassment [that]...forced me to move" (Exh. "O", ¶¶ 8, 12).

37. As for the condition of the block, so "derelict" as a result of the assemblage that it was "uninhabitable" and "forced" plaintiff to move, so the amended complaint states (¶9), in fact it was in about the same condition when plaintiff left as it had been when he moved in, and indeed the claim at trial was that "the value increased" (Trial 125):

Court: "Did the neighborhood deteriorate materially from 1967 to 1972?"

Plaintiff: "No, sir...." (Trial 43).*

*Nevertheless, Judge Solomon opined, in the alternative, that plaintiff had been caused to move because of an adverse "change in the character of the neighborhood" due in part, the Judge implied without support in the record, to the assemblage (Exh. "I," at 3-4).

MORGLAND SUPPORTING AFFIDAVIT

The November letter:
enter the Madison
defendants

38. Mr. Glickman, of course, had given no further thought to plaintiff after their brief September 7 meeting. Plaintiff seemed to have no complaints against the Madison defendants, and they had no interest in plaintiff's apartment and building because of the 873 Corp. lease (Glickman aff. ¶¶ 30-31).

39. Thus it came as a total shock when Mr. Glickman received plaintiff's letter of November 20, 1972 (annexed to Exh. "E" as exhibit B). This letter (the "November letter") asserted, for the first time to the knowledge of the Madison defendants, that Mr. Glickman had been heading a conspiracy -- supported by Garfinkel (Munchtime was not mentioned), Urban, Citadel, and Odyssey House -- to drive plaintiff from his apartment:

"After years of tolerating your incessant harassment in your attempt to drive me from my apartment at 200 East 53rd Street so that you could build an enormous profitable office building, I am no longer able physically or mentally to bear the continued pressure and, therefore, am forced to leave my apartment at a loss of many scores of thousands of dollars to me" (p. 1). *

The November letter attributed plaintiff's decision to leave his apartment not only to "the general conditions on the block", which he blamed on Odyssey House, but also

*While written (possibly by plaintiff's present counsel -- (50-51, 69-70)) in the self-serving style of most letters written to justify a planned litigation, the November letter, somewhat novelly, was distributed to a variety of news media and "others" (p. 3), thus resulting in Mr. Glickman's counterclaim for defamation in this action (Exh. "E," ¶¶ 22-27). At this time summary judgment is not sought on this counterclaim -- or on another (Exh. "E," ¶¶ 13-21) based on a similar October letter never received by Mr. Glickman (Glickman aff. ¶ 31) -- because of the fact questions concerning, principally, plaintiff's state of mind (see ¶¶ 44-46, infra).

MADISON SUPPORTING AFFIDAVIT

to "specific acts against me" -- the door axing, the Garfinkel suits to decontrol his apartment and force removal of his roof door bolt, the "mysterious telephone calls", etc. -- all of which were blamed on Mr. Glickman (40-41). The climax was this lurid suggestion that Mr. Glickman was a murderer:

"Apparently, when nothing else works [to force tenants from their apartments], even more drastic measures are used: we all know of the unsolved murder of the president of the Turtle Bay Association, of the death mentioned in the New York Magazine article, and of several others less publicized and very cleverly covered up" (p. 2).

Plaintiff did not know even if Mr. Glickman had been involved in the Turtle Bay assemblage (65-66), as in fact he had not (Glickman aff. ¶ 31). The paranoid origin of this extraordinary November letter, and of this action against the Madison defendants based on the unfounded grand conspiracy theory it alleges, are reviewed below (¶¶ 44-46, infra).

Diversity jurisdiction:
enter this Court

40. Upon plaintiff's return to New Orleans his many legal proceedings in New York lapsed. Plaintiff lost interest in his Rent Control Administration harassment proceeding (¶ 31, supra), which ultimately was resolved against him, either on the merits or by default (Exh. "O," ¶¶ 8-15). His last communication with Mr. Marcus, the officer who had conducted the hearing (Exhs. 72 and 73), apparently was a distribution of a copy of the November letter (p. 3). His Supreme Court harassment action against Munchtime and Garfinkel was discontinued without prejudice (Exh. 80). And, of course, the various rent proceed-

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ings had become academic. However, now it was this Court's turn.

41. Given the diversity jurisdiction created by his new residence in Louisiana, in February 1973 plaintiff commenced Rathborne I in this Court, (Exh. "F"), thereby attempting to make a federal case out of what was properly an administrative proceeding under the rent control laws (see Mem. Law, pp. 38-50). We have reviewed above the discovery in Rathborne I and the stipulation discontinuing it against all defendants except Garfinkel and 873 Corp. (see ¶ 13, supra).

42. At the conclusion of the trial Judge Solomon indicated his tentative inclination to rule against plaintiff (Trial 320-27). Next, plaintiff petitioned to reopen his rent control harassment proceeding (Exh. "O"), and, through the letter of counsel annexed as Exhibit "P," asked Judge Solomon to stay his decision under the primary jurisdiction doctrine until the Rent Control Administration -- "the agency with particular expertise in this area of. . . landlord harassment" (Exh. "P," p. 1) -- had determined the proceeding. Judge Solomon declined to do so and rendered judgment against plaintiff (Exh. "I"), which plaintiff has appealed.

43. Thus plaintiff's forum hopping (as distinguished from mere forum shopping), and his inconsistent assertions of who it was that harassed him, have led to the pendency of three litigations over plaintiff's troubled tenancy. The Court of Appeals is deciding the

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remnants of Rathborne I,* the state courts are deciding if plaintiff may reopen his Rent Control Administration harassment proceeding,** and this Court has this action. Enough, we submit, is enough.

The paranoid
origin of this
action

44. The full record before this Court demonstrates that there is no basis for plaintiff's suspicions that the Madison defendants had anything to do with whatever harassment he experienced. Rather than in reality, these suspicions had their origin in plaintiff's severely disturbed state of mind (if his evidence in Rathborne I be believed) resulting from his battles with Mr. Garfinkel, Munchtime and allied anonymous forces (see ¶¶ 20-35, supra):

Court: "Are you contending the incidents stimulated by Mr. Garfinkel were so severe that it was necessary for you to see a psychiatrist?"

Plaintiff: "Sir, I was flipping out. I screamed."

Court: "Who decided that you should go see the psychiatrist?"

Plaintiff: "Bradley Davis; everybody. I mean, I was screaming at everybody. I was crying." (Trial 37, lines 13-19).

45. The psychiatrist plaintiff consulted in the midst of his Garfinkel disputes found plaintiff to be "on the verge of a psychotic decompensation of a para-

*The appeal (dkt. 75-7313) was argued in September, it has not been decided.

**The City moved to dismiss the petition (index no. 6624/75) in July; this motion has not been decided.

MADISON SUPPLEMENTAL AFFIDAVIT

noid type (Trial 198); his "thinking was disorganized," with "a flavor of paranoid thought" (Trial 193). Plaintiff's friends also found him to be "very paranoid" (Trial 102).

46. The full record shows that plaintiff's paranoia, whether self-induced or caused by the Garfinkel and Munchtime disputes, is the only connecting link between his harassment, if any, and the Madison defendants. His mind disorganized and his imagination fueled by a magazine article (annexed to Exh. "L") critical of the Madison assemblage, plaintiff came to view himself as the object of a grand conspiracy, which included even the police (76-78, 83-85, 111-12 and 559-60), headed by Mr. Glickman. Thus, in his judicial motion for an injunction and in his harassment statement to the Rent Control Administration plaintiff attributed to Mr. Glickman -- "the real landlord" (Exh. "L," at 3) -- all his problems, from the door axing to the kitchen grease to the anonymous calls (Exh. "L," at 3; Exh. "N," at 2). Glickman encouraged Garfinkel, who in turn encouraged Munchtime, plaintiff speculated (451). "The boss was the assembler and everyone else was his minion" (293).

47. All this was fantasy and no more -- unless it be deemed a conscious fiction created in order to bring a lawsuit -- for the following actual conduct by the Madison defendants could not be deemed by a rational mind, or a rational jury, to have "constituted harassment of plaintiff".

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The Madison defendants:
no reason to harass
plaintiff

48. Madison is engaged in real estate development; its best known project is the recently constructed "Galleria" on East 57th Street. Sometime in 1967 Madison decided to begin assembling property on the block for possible future development; Madison had no specific project in mind, but the block was well situated and possessed obvious potential (Glickman aff. ¶6).

49. In the course of the assemblage, on February 5, 1971, the Madison defendants purchased the fee title to plaintiff's building. However, since the fee title was subject to the long-term 873 Corp. and Munchtime leases, Madison could not disturb the building or use the site in any development project (Glickman aff. ¶7-8).*

50. Thus, throughout plaintiff's tenancy, the Madison defendants never had possession of the building, nor any reason to care in the slightest whether plaintiff remained in tenancy. They had no conceivable reason to harass him, and did not do so (Glickman aff. ¶¶ 5, 9-10).**

*Similar long-term leases affected the two buildings next to plaintiff at 867 and 871 Third Avenue (Glickman aff. ¶ 9).

**It should be noted that had Madison ever acquired the 873 Corp. and Munchtime leases and needed to demolish plaintiff's building for a redevelopment, and thus to remove him from possession, it had perfectly legal means to accomplish this. After filing plans for an intended new building they would have had the right under the rent control regulations to evict plaintiff upon issuance of the required certificate of eviction by the Rent Control Administration (Mem. Law, p. 39).

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Urban and Citadel: no harassment and no contact with plaintiff

51. Since the Madison defendants had not previously been involved in an assemblage encompassing a large number of residential buildings, they retained experts in the field -- defendants Urban and Citadel -- to manage the buildings and to relocate tenants from the block (Glickman aff. ¶ 11). Madison entered into standard form agreements with Citadel and Urban covering all of the properties acquired in the course of the assemblage. The contracts provided that Citadel was to manage the acquired properties for a fee of five percent of the total rent collected, and that Urban was to relocate residential tenants located in the buildings for a fee of \$500 per tenant. Urban was authorized to spend up to \$2,000 or \$3,000 per tenant for relocation, whether in the form of a payment to secure a new apartment for the tenant or a payment directly to the tenant to induce self-relocation (Glickman aff. ¶ 12).

52. Although the standard form contract was executed for plaintiff's building, its relocation aspects, and indeed most of its management aspects, had no relevance to the building by reason of the 873 Corp. net lease. Since Madison did not own the leasehold it did not have possession of the building and had no right to interfere with plaintiff's relationship with 873 Corp. Urban and Citadel thus only collected the monthly net lease rent owned Madison by 873 Corp., and perhaps occasionally contacted 873 Corp. to inform it of building violations or other notices received by Madison as the fee owner of the property (Glickman aff. ¶¶ 13-15).

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It is an admitted fact that no representative of Citadel or Urban ever contacted plaintiff for any purpose throughout the entire period of his tenancy (36-37).

53. Urban and Citadel did perform their management and relocation functions with respect to other buildings on the block. Plaintiff apparently claims that Urban and Citadel harassed tenants in these other buildings by making threats against them and failing to maintain their buildings and so forth (Amended complaint ¶ 8). Plaintiff never supplied any specifics to support his similar allegations in Rathborne I, and they are untrue. The Madison defendants never received a single complaint of such conduct by Urban or Citadel, either from any tenant or from the active neighborhood associations in the area, as surely they would have if any had occurred. Madison's sponsorship of the assemblage was public knowledge and Urban's name was prominently identified in the "large and ungainly signs" of which plaintiff complains (Glickman aff. ¶ 16, 20). And, of course, plaintiff in any event would have no standing to recover damages for himself based on alleged wrongs done to other tenants (see Mem. Law pp. 18-19).

Management of the block: standard practices with no impact on plaintiff

54. Equally irrelevant to plaintiff, and to plaintiff's entire building, were these actions taken by the defendants in the normal course of the assemblage:

- the declination to re-rent vacant apartments;
- the placement of signs indicating the plain fact that the buildings were being vacated and that vacant space would not be re-rented; and

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-- the sealing of vacant buildings with tin.

55. Madison acted only in accordance with economic common sense in not re-renting vacant apartments and stores, and incurring the attendant management expenses, in the buildings it soon planned to demolish for a redevelopment (Glickman aff. ¶¶ 18-19). And, having resolved to leave the vacant space vacant, Madison simply complied with the law in tinning these buildings. The Administrative Code of the City specifically requires as follows:

" . . . A vacant building which is not continuously guarded shall have all openings sealed in a manner approved by the commissioner [of Buildings], and it shall be the duty of the owner thereof promptly to make any repairs that may be necessary for the purpose of keeping such building sealed. . . ." (SC26-80.0).

56. Plaintiff has this to tell us about the Urban and Citadel signs that so sorely harassed and vexed him, and which announced the policy of not re-renting vacant space (Glickman aff. ¶ 20):

"Signs began to go up approximately in the Spring of 1971 on 52nd Street, 53rd Street and Third Avenue. By November, 1972, there were approximately three large signs on 53rd Street, one large sign on 52nd Street and two or three large signs on Third Avenue."

"The signs contained the names Citadel and Urban and a message about relocation. The signs were each approximately five feet long and three feet wide" (Answers to Citadel and Urban Interrogatories in Rathborne I, nos. 6 and 7).

This cannot be the stuff of which torts are made. The wording of the signs, with their statement that Urban was "not a governmental agency," have been specifically

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held by the New York Courts to have complied with the law (see Mem. Law, pp. 22-23). Madison, Urban and Citadel were not under some requirement to keep secret their development project and the resulting need to relocate tenants. Indeed, not posting the signs might have been construed as a form of disingenuous concealment at some point.

57. If the basic policy decision of not re-renting vacant space was not tortious, then the announcement of the policy in signs, and the application of tin to vacant buildings as required by law, could not be tortious. There may be valid public policy arguments concerning whether or not the city should permit apartments to remain vacant pending redevelopment, but surely that public policy debate cannot be converted into a tort. Especially it cannot by a plaintiff who, by his own admission, was four or five buildings removed from the nearest tinne and vacant building (325-27, 340).

Odyssey House: its
program and Mr. Glick-
man's personal involvement

58. Plaintiff's final complaint also concerns an action taken without relationship to him: the provision by Mr. Glickman of free space in certain vacant buildings on the block for facilities of Odyssey House. Plaintiff, during his tenancy, never complained to the Madison defendants either about the general presence of Odyssey House on the block or about any specific problems involving Odyssey House program participants, and the Madison defendants in fact received no such complaints from any other tenants (Glickman aff. ¶ 21).

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59. Odyssey House is a not-for-profit corporation engaged principally in the rehabilitation of persons formerly addicted to drugs. Although a private corporation, most of its funds come from federal, state, and local governmental sources (deposition in Rathborne I of James Murphy, Odyssey House Deputy Executive Director of Administration ("Murphy dep."), filed in support of this motion, pp. 31-34). Its Board of Advisors included such distinguished citizens as Senators Javits and Buckley and Justice Abraham Gellinoff (Glickman aff. ¶ 22). Odyssey House's approach to drug rehabilitation is what it terms a "therapeutic community," a full-time experience in living carefully supervised and designed to assist former addicts in reentering society. Its patients reside in Odyssey House residential facilities and are employed by Odyssey House, either in the maintenance of that facility or in storefront commercial facilities, which also serve as a fund raising mechanism (Murphy dep. 5, 22-24, 33).

60. Mr. Glickman had first been interested in Odyssey House through an acquaintanceship with its Executive Director, Dr. Densen-Gerber, as a result of which he toured the various Odyssey House facilities in the City. In 1971 he became a member of its Board of Advisors (Glickman aff. ¶ 23; Murphy dep. 43-44).

61. Dr. Densen-Gerber discussed with Mr. Glickman whether he might be able to make available some of the vacant buildings on the block for temporary use by Odyssey House as a part of its program. Mr. Glickman agreed to do so, under conditions that would permit the quick

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removal of Odyssey House when Madison was ready to proceed with its redevelopment plans (Glickman aff. ¶ 24).*

62. The facilities which Odyssey House used consisted of storefronts along Third Avenue, in which were located shops and an information center, two small residences for patients on 52nd Street, and a staff residence in an apartment building at 210 East 53rd Street, which overlooked plaintiff's roof garden (Murphy dep. 11, 16, 25-29). The persons residing at 210 East 53rd were limited to staff members and their families -- there were no patients present; about half of the staff members were former addicts (6-7, 10, 24-25). The total Odyssey House population on the block was 80 persons, of whom only 30 were patients, and none of whom was maintained on drugs (Murphy dep. 5-7).

-- the specific
incidents

63. Plaintiff's bones of contention with Odyssey House concern the staff residence. He complains of incidents in which acts plaintiff found abusive were directed against him by persons he suspects were affiliated with Odyssey House. One group of such acts concerned the aforementioned (¶ 32, supra) falling objects, "all, or nearly all" of which plaintiff

*Mr. Glickman's assistance to Odyssey House was not limited to the block. He also made vacant storefronts available to Odyssey House on Lexington Avenue and East 57th Street; one of the Odyssey House facilities at the latter site was an art gallery supervised by Mrs. Glickman (Glickman aff. ¶ 24 fn.; Murphy dep. 17).

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believes were dropped from the balconies of the staff residence (429), although he "did not see where they came from" (431). It is a fact that anyone having a desire to toss things on to plaintiff's roof garden could easily have done so from the sidewalk below (489-90), or from the various windows in plaintiff's own building that overlooked his garden (Trial 22-23, 31; 538-45).

64. On something like 7 to 15 occasions -- "it wasn't many" -- 2 or 3 people on one of the staff residence's balconies were "just talking" (481) when plaintiff was in his roof garden. Although the people said nothing to plaintiff they made "little comments" which plaintiff "thought were innuendos" -- he cannot remember either what the remarks were or what inferences he drew from them (480-82). On two occasions plaintiff "had words" with people on these balconies, which exchange plaintiff probably initiated by making "very flippant" remarks (488).*

65. Plaintiff also complains about congestion on 53rd Street. He says that the number of people present on the sidewalks "increased...maybe 500 per cent" over the 1970 to 1972 period (437) and on occasion he had to make a detour around some "young...black" people on the sidewalk (437, 486). More seriously, plaintiff found apparent addicts loitering in the hallway of his building who appeared to be "doping up" (434, 484-86).** But plaintiff did not

*Compare plaintiff's continual manner of "provoking" Mr. Garfinkel, as found by Judge Solomon (Exh. "I," pp. 2-3).

**Compare the "derelicts" he frequently found there as early as 1966 (¶ 2i, supra).

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trace either the sidewalk obstructors or the hallway loiterers to Odyssey House (434) and is "not saying they are your [Odyssey House's] people" (484-85). His only specific attribution of such conditions to Odyssey House is a claim that 2 or 3 people, or up to as many as 20 in an "exceptional circumstance," usually were standing in front of or on the second floor balcony of the staff residence when plaintiff walked by, although they seem not to have done anything to plaintiff (483-84). He does not know if even these people were associated with Odyssey House (424-25).

-- little or no evidence
tying the incidents to
Odyssey House

66. It is most doubtful if any of the incidents of which plaintiff complains -- assuming they occurred in reality rather than in his mind (see ¶ 44-46, supra) -- were related to Odyssey House. Its total block population of 80 could not have caused the 500% increase in sidewalk traffic that plaintiff observed. Odyssey House carefully supervised and checked its program participants, only 30 of whom were patients rather than staff, to insure that they were not using narcotics -- they were not (Murphy dep. 5-7, 25) -- and that all were present and accounted for in the evenings -- they were (Murphy dep. 29). No one other than plaintiff even complained to Odyssey House about its facilities or its program participants on the block (18-19, 29).^{*} Thus it seems inconceivable that the addicts who plaintiff found "doping up" in his hallway

^{*}Plaintiff says his complaints received a "superpolite, and ineffective" response (433).

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were Odyssey House people. And others, most notably the Munchtime minions, had far more reason to throw things at plaintiff than did the Odyssey House staff members, even if plaintiff did provoke them by making "flippant remarks."

67. The real source of plaintiff's grievances about "drug addicts" on the block was unrelated to Odyssey House or to the Madison defendants. A methadone clinic had been established in a building across the street from plaintiff having no relationship to Madison (Glickman aff. ¶ 28). Odyssey House itself had complained about the total lack of supervision by this clinic of the addicts who visited its facilities (Murphy dep. 30-31). Plaintiff admits he was aware of the unruly nature of the people who frequented that clinic around the same time* that the various incidents he attributes to Odyssey House people occurred (582-85; see 414, 432, 478-79). He complained about the clinic at the time to Mr. Avolon of Munchtime, which he thought attracted these people (Trial 217).

68. But these facts aside, the decisive point for purposes of this motion is that plaintiff clearly has no evidence that Odyssey House people were responsible for his problems. He proceeds on suspicion and conjecture alone (e.g., 425, 431, 434, 484-85) in blaming Odyssey House for

*The November letter (p. 1) refers to "the other drug groups which have moved in simultaneously [to Odyssey House] and the attendant Mafia-controlled street drug-pushers."

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any abusive behavior he experienced, and can proceed no further with this litigation on that basis (Mem. Law, pp. 32-37). The only matter attributable on an evidentiary basis to Odyssey House is that most of its 80 staff members and residents, in addition to being well supervised and well behaved, were Black. Although this ethnic distribution seems to have been objectionable to plaintiff (584-85; see 424-25, 438, 484-86), it hardly, ipso facto, "constituted harassment of plaintiff."

-- no complaints to
the Madison defendants

69. Even if plaintiff had any prospect of establishing Odyssey House's responsibility for the abusive incidents he could not maintain this action against the Madison defendants: they had no notice of the incidents, much less is there any evidence they directed or encouraged them. Plaintiff never complained about Odyssey House to the Madison defendants -- the topic did not come up at his September 7 meeting with Mr. Glickman (432) -- and they received no such complaints from any other tenant or source (Glickman aff. ¶ 21). In the absence of such complaints Mr. Glickman and the other Madison defendants never had an opportunity to investigate plaintiff's alleged abusive incidents and, if they had been attributable to Odyssey House, either to require Odyssey House to provide better supervision or to end Odyssey House's use of its facilities (Glickman aff. ¶ 26). The Madison defendants also had no reason to believe that Odyssey House's mere presence on the block would cause or was causing any other problems. Mr. Glickman had been assured, prior to making the facilities

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available to Odyssey House, that all program participants would be carefully supervised to insure both that they remained drug-free and that they did not otherwise behave improperly (Glickman aff. ¶25); there is every evidence that Odyssey House lived up to these assurances (see ¶¶ 66-68, supra).

Plaintiff's September conference
with Mr. Glickman: no complaints

70. If plaintiff had any complaint about Odyssey House or about any other activity relating to the assemblage, he easily could have communicated these to the Madison defendants and given them an opportunity to take corrective action. He had no problem finding Mr. Glickman and securing an appointment with him the one time he contacted him -- in September 1972 (Glickman aff. ¶¶ 5, 30).

71. What transpired during that September meeting was later reduced by Mr. Glickman to a memorandum, annexed as Exhibit "Q" (79)* (and also exhibit D at Mr. Glickman's deposition), the accuracy of which has been verified in material part by the plaintiff (432, 471-76). Plaintiff made no complaint about Odyssey House, no complaint tinning or signs, nor indeed any reference at all to harassment. Instead, Mr. Rathborne attempted to obtain a cash payment in exchange for giving Madison possession of his apartment, and Mr. Glickman explained that Madison had no interest in his apartment until

*As deposition exhibit 79 the memorandum begins with the words "Mr. Rathborne had called," the previous matter having been redacted.

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such time as it was able to acquire Mr. Garfinkel's net lease.* Mr. Rathborne then suggested that he might be useful to Madison in giving evidence against Mr. Garfinkel in any proceedings Madison might bring against Mr. Garfinkel. Mr. Glickman explained that Madison had no such plans, and there the meeting ended (Exh. "Q"; Glickman aff. ¶30; 471-76).

Silence and delay

72. From plaintiff's silence at the September meeting and from the total absence of complaints from plaintiff at any other time, the Madison defendants were reasonably entitled to believe that plaintiff consented to their activities on the block (Glickman aff. ¶30). That belief alone would bar this suit (Mem. Law, pp. 29).

73. Plaintiff's silence also prevents him from claiming that the Madison defendants acted knowingly or intentionally in failing to stop the activities of which he now complains. To the extent that plaintiff had valid complaints concerning any abusive conduct by persons against whom the Madison defendants had the ability to act -- such as the Odyssey House staff residents -- they were complaints about matters which the Madison defendants could have corrected had they been so advised. Instead plaintiff, although circulating his allegations against Mr. Glickman to various and sundry media, never informed Mr. Glickman himself or Citadel or Urban of his problems. There could have been

*One week later plaintiff proceeded to Mr. Garfinkel and, through counsel, asked him to give plaintiff a substantial cash payment for vacating (see ¶34 fn 2, supra). One wonders if plaintiff's real grievance is that no one was willing to treat him as a "holdout" entitled to an inflated payment for his apartment.

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no intention to harass plaintiff by these defendants through actions by others of which they never had notice. The law does not permit a person who remained silent in the face of conduct damaging him, which could easily have been halted upon notice, to then give the notice in the form of a summons and complaint only after the alleged damage has been completed (Mem. of Law, pp. 27-31).

74. The statute of limitations also bars plaintiff. There can be no doubt that plaintiff knew of Mr. Glickman's assemblage activities by at least the end of 1971. By that date as well, the tinning on the buildings, the signs posted by Urban and Citadel and the Odyssey House facilities were all in place (Glickman aff. ¶29). Thus if these activities gave rise to any cause of action by plaintiff it had arisen well before May 1972, and thus easily more than 3 years -- the maximum statute of limitations possibly applicable under New York law -- prior to commencement of this action in May 1975 (Mem. Law, p. 34). Aside from the statute, to the extent plaintiff's claim sounds in constructive eviction it is barred by his failure to vacate with reasonable promptness after the assemblage activities of which he complains arose (see cases cited in Exh. "I," at 4).

Plaintiff's paranoid
"harassment" suspicions
have no evidentiary basis

75. The facts reviewed above demonstrate that there is no evidentiary basis for plaintiff's harassment complaint against the Madison defendants, including Citadel and Urban as their agents. The essence of harassment, if

MORELAND SUPPORTING AFFIDAVIT

it has been recognized as a tort in New York at all, is intentional and knowing action of an abusive character directed against the plaintiff (Mem. law, pp. 15-16) -- "grossly insulting and threatening conduct", to use Judge Solomon's expression (Exh. "I," at 2). Here the Madison defendants took no action at all against plaintiff, let alone action of an abusive character (see Mem. Law, pp. 34-36).

76. Plaintiff complains of three separate types of actions, none of which, taken separately or together, gives rise to a claim for relief. First, he makes baseless allegations about alleged acts of harassment by the Madison defendants against other tenants on the block, or indeed tenants in other blocks, such as "threatening tenants" and "refusing to maintain properties" (Amended complaint ¶¶ 8, 13). Clearly these allegations would afford plaintiff no claim for relief even if he had any factual basis for them, since he may recover damages only for acts against him causing him damage (Mem. Law, pp. 18-19).

77. Secondly, plaintiff complains of a variety of "specific acts against me" (November letter, p. 2) which indeed may have been directed against him, but certainly not by the Madison defendants. Thus such strange interludes as the door axing and greasing can be charged only to Garfinkel and Munchtime, there being utterly no basis for any allegations that the Madison defendants were involved in these incidents. Likewise, any abusive acts by Odyssey House residents -- if there are any with an evidentiary footing -- cannot be charged to the Madison defendants since they had no notice of them nor reason to expect they would be or were occurring (Mem.

MORELAND SUPPORTING AFFIDAVIT

Law, pp. 27-31). Even plaintiff ultimately admits that he has no "knowledge" of any involvement by Mr. Glickman, Citadel or Urian with any of the specific abusive acts directed against him (23, 30-31, 36-37, 63-64, 103-04, 292-93, 332, 397, 521, 526-27). Plaintiff's extra-sensory perception (see Trial 324) that such a conspiracy existed (63-65, 219) is not evidence.

78. Finally, there is the limited class of actions which can be charged to the Madison defendants in the course of the assemblage. There was the policy of not re-renting vacant space, the announcement of that policy in the signs, and the tinning of vacant buildings. These actions had no relationship to plaintiff or his building and were entirely trivial in impact even with respect to tenants who lived near the tinned buildings. They were no more than the inevitable visible indications of the simple fact that a redevelopment was imminent. We submit they could not be a tort unless the very act of assembling and preparing a block for redevelopment is to be held tortious. There is no way that a developer could assemble and prepare a block for redevelopment without creating some atmosphere of change. Redevelopment is not "harassment".

79. With respect to the offer of facilities to Odyssey House, there is not one shread of evidence in the record that this offer was made for any reason other than Mr. Glickman's personal interest in furthering Odyssey House's commendable program of public service. There was no basis for a belief by these defendants -- either before or after Odyssey House came to the block -- that plaintiff

MCQUELAND SUPPORTING AFFIDAVIT

or any other tenant would feel harassed or be inconvenienced by Odyssey House's presence. On this record, it would offend public policy to sustain a tort claim based on Mr. Glickman's public spirited offer.

Plaintiff is limited to
his statutory remedy for
his harassment

80. If plaintiff had a substantive claim for harassment, which he does not, he could not assert it in this action because of his failure to secure the administrative finding of harassment which, under the New York rent control laws and regulations, is a prerequisite to a damage action for harassment by a rent control tenant. Plaintiff's tenancy was based entirely on the rent control laws and regulations. These laws and regulations comprise a comprehensive scheme governing the rights of statutory tenants, and include a specific remedy for precisely the harassment claim which plaintiff seeks to pursue here. That remedy requires, in clear and unmistakable terms, that the tenant first secure a determination that he vacated his apartment due to harassment before initiating an action in court for any damages sustained by reason of the harassment. Further, the tenant must seek that administrative determination within 90 days after vacating his apartment (Rent Control Administration, Rent and Eviction Regulations, §78(b), printed at N.Y. Unconsol. Law, pp. 567-68 (McKinney 1974); for authorizing legislation see N.Y.C. Admin. Code §Y51-1.0 - Y51-18.0 (1971 and Supp. 1974), and N.Y. Unconsol. Laws §§ 8601-17 (McKinney 1974)); (see Mem. Law, pp. 38-50).

MORELAND SUPPORTING AFFIDAVIT

any administrative determination of harassment, maintain this action. Plaintiff knew that this remedy existed. He had begun such a proceeding against 873 Corp. before he vacated his apartment and submitted his November letter, charging Mr. Glickman with directing the harassment, to the hearing officer after vacating his apartment (see ¶¶ 31, 40, supra). He indeed tried to persuade this Court to stay its ruling in Rathborne I pending the determination of the harassment proceeding by the "expert" administrative agency (Exh. "P"). In short, plaintiff's claim is barred by his failure to pursue and exhaust his exclusive, and readily available, statutory remedy (Mem. Law, pp. 38-50).

Conclusion

82. When plaintiff moved into his apartment he had no reasonable expectation that the surrounding neighborhood would remain unchanged for the rest of his life. He did not even have any expectation of being permitted to remain in his own apartment in perpetuity, because he knew (466-70) that the rent control laws provide for the eviction of tenants when their building is to be demolished and replaced by a new structure (Mem. law, p. 39).^{*} Plaintiff, like every other tenant in New York, must be deemed to have known when he moved to the city that some day his block might be assembled for redevelopment. He has no claim because it came to pass. He left his block no worse than he found it, and for reasons unrelated to the assemblage (see ¶¶ 36-37) supra).

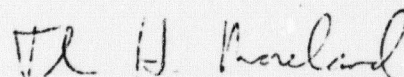
83. It is now the plaintiff who is the harasser

^{*}Ironically, the previous tenant in plaintiff's apartment was evicted by 873 Corp. under the similar regulations relating to the subdivision of apartments (Trial 261-62).

MORELAND SUPPORTING AFFIDAVIT

and the Madison defendants who are the harassed, not to mention the courts which are being so misused in these frivolous litigations. Plaintiff has had ample opportunity to discover any facts supporting his allegations and has not. The Madison defendants should not be further subjected to the expense and burden of litigation when it is crystal clear that plaintiff has not stated a cause of action which he can prove.

84. The Court is respectfully requested to grant the motion of the Madison defendants for summary judgment. If the Court concludes that any portion of plaintiff's complaint is to survive this motion, then it is respectfully requested to at least protect the Madison defendants from the further burden of repetitious discovery by granting their motion for a protective order. Finally, the court is requested to dismiss the action against Madison Associates absent any service of process upon it.



Thomas H. Moreland

Sworn to before me this

22nd day of October, 1975.


Notary Public

LOUISE M. A. KELLY
Notary Public, State of New York
No 52-2079775
Qualified in Suffolk County
Temporary Expires March 31, 1976

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EXHIBIT A

Documents filed with the
Court in support of motion
of the Madison defendants
for summary judgment

- "File I" -- Deposition of plaintiff Prescott H. Rathborne taken by the defendants in Rathborne v. Citadel Management Co., Inc., et al. ("Rathborne I"), and signed by the officers before whom the deposition was taken, upon plaintiff's refusal to sign the deposition, pursuant to Rule 30(e), Federal Rules of Civil Procedure.
- "File II" -- The exhibits marked at deposition of plaintiff in Rathborne I, with the exception of Exhibits 24-27 and 45-46, which are not in the possession of the Madison defendants and not cited in these motion papers.
- "File III" -- The deposition of defendant Edwin J. Glickman conducted by plaintiff in Rathborne I, together with copies of exhibits marked at that deposition.
- "File IV" -- The deposition of Odyssey House, by James P. Murphy, conducted by plaintiff in Rathborne I, together with copies of exhibits marked at that deposition.
- "File V" -- The transcript of the trial held in Rathborne I; the exhibits introduced at that trial, which are not cited in these motion papers, are part of the Rathborne I record on appeal on file with the Court of Appeals (Docket No. 75-7313).

DOCUMENTS
FILED WITH COURT

None of the above filed documents has been served upon plaintiff together with these motion papers (except for the Rule 30(e) statements of the officers who signed plaintiff's Rathborne I deposition), because plaintiff or his counsel obtained copies of all such documents in the course of Rathborne I.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PRESCOTT H. RATHBORNE,

Plaintiff,

-against-

CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., S. GARFINKEL,
EDWIN J. GLICKMAN, ODYSSEY HOUSE, INC.,
873 THIRD AVENUE CORP. and SALBIAN
REALTY CO., INC.,

Defendants.

COMPLAINT

BEST COPY AVAILABLE

-----x
Plaintiff, for his complaint, by BRADLEY B. DAVIS, his
attorney, respectfully alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. At the time of the commencement of this action, plaintiff is a citizen of the United States and a resident of the State of Louisiana.
2. Upon information and belief, at all times herein-after mentioned, the defendants are residents of the State of New York, within the jurisdictional area of the Southern District Court.
3. Upon information and belief, at all times herein-after mentioned, the defendant corporations were and still are domestic corporations with their office and principal place of business in the City, County and State of New York.
4. Jurisdiction lies in this Court under the provisions of 28 U.S.C. 1332, because there is complete diversity of citizenship between plaintiff and defendants and more than \$10,000 is in dispute.
5. Venue lies in this Court because defendants are located within the State of New York and, upon information and belief, within the Southern District area.

COMPLAINT IN PRIOR ACTION

AS AND FOR A FIRST CAUSE OF ACTION

6. Heretofore, and between 1966 and November, 1972, plaintiff resided in a rent controlled apartment at 200 East 53rd Street, Manhattan (hereinafter "premises").

7. Upon information and belief, at least since early 1973, the premises have been owned by defendant SALBIAN.

8. Upon information and belief, defendant SALBIAN is in fact a corporate creation of defendant GLICKMAN, employed to cloak his ownership of this property for reasons hereinafter set forth

9. Upon information and belief, defendant 873 THIRD AVENUE CORP. is the lessee of the premises, pursuant to a written agreement.

10. Upon information and belief, defendant GARFINKEL is the principal stockholder and controlling person behind defendant 873 THIRD AVENUE CORP.

11. Upon information and belief, prior to 1972, defendant GLICKMAN determined to assemble various properties on the block where plaintiff's premises are located in order to construct a large office building on that block.

12. Thereafter, and prior to 1972, defendants GLICKMAN, CITADEL, URBAN and ODDISSEY HOUSE entered into a conspiracy to illegally drive plaintiff and other rent controlled tenants from the block so that they might vacate buildings, demolish them and construct the aforesaid office building.

13. In furtherance of the aforesaid conspiracy, upon information and belief, all defendants entered into a conspiracy to drive plaintiff from his residence at the aforesaid premises.

COMPLAINT IN PRIOR ACTION

14. In furtherance of the conspiracy, defendants performed at least the following illegal acts:

- Location of eight purported "drug rehabilitation" centers administered by defendant ODYSSEY HOUSE, although the area was not a high drug-use area;
- Posting of ungainly signs and unnecessary tinning of windows to make the block unattractive and dangerous for living;
- Depriving plaintiff of heat, electrical and other vital services;
- Petitioning to decontrol plaintiff's apartment on various improper grounds;
- Threatening plaintiff's life and property, specifically including the axing of plaintiff's front door on June 27, 1972;
- Refusing to provide a secure lock at the entrance to the building where plaintiff resided;
- Refusing to provide plaintiff with an operational door buzzer system;
- Refusal to make repairs to his apartment when needed;
- Placing garbage in the hall in front of plaintiff's apartment and grease on the front door thereof;
- Refusing to paint plaintiff's apartment when due;
- Failing to provide adequate security for a half-vacated block containing a large number of "drug rehabilitation" centers placed there by defendants..

15. By reason of the above and many other acts of harassment, plaintiff suffered grievous mental anguish and incurred huge legal expenses in his effort to maintain his residence through the depredations of defendants.

COMPLAINT IN PRIOR ACTION

16. In November 1972, by reason of the harassment by the conspiring defendants, plaintiff was forced to vacate the premises.

17. Upon information and belief, the value of statutory tenancy rights to the premises at the time he was forced to vacate same was \$100,000.

18. Furthermore, upon information and belief, the value of the garden terrace which plaintiff had constructed, as well as fixtures which plaintiff could not remove from the apartment when he was forced to vacate as aforesaid was \$200,000.

19. Upon information and belief, all defendants, except defendants 873 THIRD AVENUE CORP, GARFINKEL and SALBIAN engaged in similar acts of harassment toward hundreds of other rent controlled tenants, both on this block and in other areas where they were engaged in similar assemblage efforts and are continuing to perform such harassment acts in such areas, all to the end of driving these tenants from their homes illegally.

20. Furthermore, these acts of harassment, by forcing plaintiff to vacate his home, deprived plaintiff of property without due process of law and deprived him of his right to privacy and quiet enjoyment of his home, all in violation of the Constitution of the United States and the State of New York.

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANTS 873 THIRD AVENUE
CORP. and S. GARFINKEL

21. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 6, 9, 10, and 15 through 20 with the same force and effect as if fully set forth herein at length.

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22. Upon information and belief, at all times hereinafter

COMPLAINT IN PION ACTION

mentioned, defendant 873 THIRD AVENUE CORP. operated as plaintiff's landlord. 23. Heretofore, and prior to 1972, defendants 873 THIRD AVENUE CORP. and GARFINKEL determined to drive plaintiff out of his rent controlled apartment at 200 East 53rd Street, Manhattan for purposes of their economic gain.

24. Upon information and belief, in furtherance of this effort, said defendants performed the following acts of harassment against plaintiff:

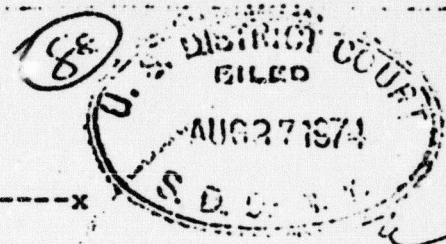
- Depriving plaintiff of heat, electrical and other vital services;
- Petitioning to decontrol plaintiff's apartment on various improper grounds;
- Threatening plaintiff's life and property, specifically including the axing of plaintiff's front door on June 27, 1972;
- Refusing to provide a secure lock at the entrance to the building where plaintiff resided;
- Refusing to provide plaintiff with an operational door buzzer system;
- Refusal to make repairs to his apartment when needed;
- Placing garbage in the hall in front of plaintiff's apartment and grease on the front door thereof;
- Refusing to paint plaintiff's apartment when due.

WHEREFORE, plaintiff demands judgment against defendants and each of them in the following sums: (1) \$100,000 for the value of his statutory tenance; (2) \$200,000 for the value of property he was forced to abandon when he vacated the premises as aforesaid; (3) \$25,000 for legal, psychiatric and other expenses; (4) \$175,000 for severe mental anguish; (5) \$500,000 for exemplary damages, together with appropriate interest and the costs and disbursements of this action.

A-99

12. 11 P. 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



PRESCOTT H. RATHBORNE,

Plaintiff,

-against-

CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., S. GARFINKEL,
EDWIN J. GLICKMAN, ODYSSEY HOUSE,
INC., 873 THIRD AVENUE CORP. and
SALBIAN REALTY CO., INC.,

Defendants.

: 73 Civ. 612
: Judge Briant

: Stipulation of
: Settlement
: AND ORDER OF
: DISCONTINUANCE
: AS TO CERTAIN
: NAMED DEFENDANT.
: ONLY

It is hereby stipulated and agreed by and between
the undersigned that:

1. This action is discontinued without prejudice,
and without costs or disbursements, as against defendants
Citadel Management Co., Inc. ("Citadel"), Urban Relocation
Co., Inc. ("Urban"), Edwin J. Glickman ("Glickman"), and
Salbian Realty Co., Inc. ("Salbian").

2. Plaintiff has been afforded full and ample
discovery against each of the defendants Citadel, Urban,
Glickman and Salbian with respect to the subject matter of
the complaint and the subject matter of the counterclaim asser-
ted by defendant Glickman.

3. Should plaintiff ever institute another action
against defendant Glickman, or any entity in which Glickman

STIPULATION SETTLING PRIOR ACTION

is an officer or investor, plaintiff will not assert and hereby waives any defense based upon a Statute of Limitations or on laches to any claim asserted against him in that later action which is similar in substance to the counterclaim asserted in this action by defendant Glickman.

Dated: August 23, 1974
New York, New York

Nickerson, Kramer, Lowenstein,
Nessen, Kamin & Soll,

By: Engene H. Nickerson

Attorneys for Defendants Edwin J.
Glickman and Salbian Realty Co., Inc
919 Third Avenue
New York, New York 10022
(212) 688-1100

Howard L. Jacobs, P. C.

By: Howard L. Jacobs

Attorney for Plaintiff
401 Broadway
New York, New York 10013
(212) 431-3710

Turchin & Topper

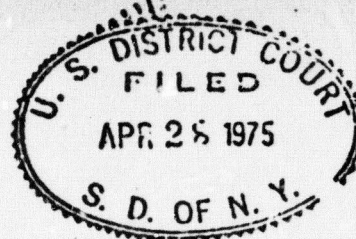
By: Edward T. Topper

Attorneys for Defendants Citadel
Management Co., Inc. and Urban
Relocation Co., Inc.
60 East 42nd Street
New York, New York 10017
(212) MO 1-0420

So ordered: AUG 26 1974

Charles L. Bryant Jr.

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK



3 ----- X
4 PRESCOTT H. RATHBORNE, :

5 Plaintiff, :

6 vs. :

7 CITADEL MANAGEMENT CO., INC., :
8 URBAN RELOCATION CO., INC., :
9 S. GARFINKEL, EDWIN J. :
GLICKMAN, ODYSSEY HOUSE, INC., :
873 THIRD AVENUE CORP., and :
SALBIAN REALTY CO., INC., :

10 Defendants. :

73 Civ. 612 C L B

OPINION

#42325

11 ----- X
12
13 Howard L. Jacobs,
14 401 Broadway,
New York, N. Y. 10013,

Attorney for Plaintiff.

15
16 Max Steinberg,
17 6 East 45th Street,
New York, N. Y. 10017,

18 Attorney for Defendants
19 S. Garfinkel and 873 Third
Avenue Corp.

20 SOLOMON, Judge:

21 This is an action for wrongful eviction. Rathborne
22 charges that Garfinkel, his landlord, harassed him into
23 vacating his apartment, and he claims more than \$200,000.00
24 in damages. Garfinkel denies responsibility for the events
25 which caused Rathborne to vacate and counterclaims for the
26 cost of cleaning the apartment and one month's rent.

27 Rathborne was the lessee of two apartments (apartment 4
28 and apartment 5) at 200 East 53rd Street, New York City.
29 Apartment 4 is the third story of the building and apartment 5
30 is the fourth floor. The lease for apartment 5 was signed in
31 December, 1965. The lease for apartment 4 was signed in
32 June, 1966. The lease for apartment 4 provided that

OPINION IN PRIOR ACTION

1 Rathborne had the exclusive use of the roof of the two-
2 story building which adjoined his building (the adjoining
3 roof), and allowed him to improve the adjoining roof. Each
4 lease was for two years. Because the building was rent-
5 controlled, Rathborne was entitled to remain in the apart-
6 ments after the leases expired at the same rental and on the
7 same terms subject only to changes authorized by the Rent
8 Control Commission.

9 During the early part of the tenancy, Rathborne's
10 relations with Garfinkel were satisfactory. Beginning in
11 1970, the relationship deteriorated. A number of incidents
12 involving the tenancy occurred, and in November, 1972,
13 Rathborne vacated his apartment.

14 Under New York law, constructive eviction occurs when
15 a landlord's grossly insulting and threatening conduct
16 seriously and substantially deprives the tenant of quiet
17 enjoyment of his premises, and as a result, the tenant
18 vacates his premises within a reasonable period of time.
19 Barash v. Pennsylvania Terminal Real Estate Corp., 26 N.Y.2d
20 77, 256 N.E.2d 707, 710 (1970); Gillingham v. Goldstone,
21 21 Misc.2d 690, 197 N.Y.S.2d 237, 238 (Munic. Ct., Bronx Co.
22 1959). To prove constructive eviction, Rathborne must prove
23 that he vacated because of Garfinkel's wrongful acts and
24 that he vacated within a reasonable time after the wrongful
25 acts occurred. I find that Rathborne failed in such proof.

26 Rathborne contends that Garfinkel threatened him. I
27 find that these so-called threats were provoked by Rathborne.
28 For example, Rathborne charges that, in the chambers of a
29 state court judge, Garfinkel called Rathborne a bigot and
30 threatened to "get him". But Garfinkel did this only after
31 Rathborne insulted Garfinkel.

32 I find that Rathborne was a constant source of irritati-

OPINION IN PRIOR ACTION

1 and continually provoked Garfinkel. Rathborne should have
2 anticipated that Garfinkel would react to his remarks.

3 I also find that much of what Rathborne characterizes
4 as threats did not amount to threats. They were merely pre-
5 dictions of difficulties that Rathborne would encounter unless
6 he changed his attitude and his actions. For example, Garfinkel
7 believed that Rathborne's door had been axed by one of Rath-
8 borne's former guests whom Rathborne had thrown out. Garfinkel
9 also believed that Rathborne's problems stemmed primarily from
10 his dispute with Munchtime, another Garfinkel tenant, which
11 operated a fast food service on the ground floor. Munchtime
12 had installed an air conditioner on the adjoining roof in
13 1966. It had the right to install the air conditioner under
14 a lease which predated Rathborne's lease, and Rathborne did
15 not object to its installation. Later, Rathborne began to
16 deny Munchtime access to the adjoining roof.

17 Rathborne contends that Garfinkel intentionally turned
18 off his electricity for six weeks in June and July, 1972.
19 Rathborne's fuse box was in Munchtime's basement. Rathborne's
20 air conditioners were continually blowing his own fuses.
21 Then, when Rathborne refused Munchtime access to the
22 adjoining roof, Munchtime reacted by refusing Rathborne
23 access to the fuse box. Garfinkel was unsuccessful in his
24 attempt to resolve the dispute because Rathborne was intransigent.
25 Garfinkel was angry and complained that Rathborne
26 would do nothing to settle the dispute. I find that Rathborne
27 failed to prove intentional misconduct by Garfinkel.

28 Finally, even though Garfinkel failed to promptly
29 repair Rathborne's buzzer, this failure was insufficient
30 to constitute a constructive eviction.

31 In 1968, the character of the neighborhood began to
32

OPINION IN PRIOR ACTION

1 deteriorate greatly. There was an attempt by a developer
2 to "assemble" (completely purchase) the block in which
3 Garfinkel's building was located. The developer bought
4 other buildings and then left them vacant. Drug rehabilita-
5 tion centers moved into the block. Vandalism and street
6 crimes increased; transients and addicts frequented the
7 streets. Rathborne introduced no evidence to show that
8 Garfinkel participated in the attempt to assemble the block
9 or was responsible for the change in the character of the
10 neighborhood. In my view, this change in the neighborhood
11 and the dangers it posed to the residents caused Rathborne
12 to move.

13 Even if Garfinkel's acts constituted a constructive
14 eviction, which I find they did not, Rathborne cannot
15 complain of those acts because he did not vacate the premises
16 within a reasonable time after the acts occurred. Most
17 authorities hold that a tenant must abandon his premises
18 within a month of the landlord's acts. 91 A.L.R.2d 638,
19 647. In Merritt v. Tague, 94 Mont. 595, 23 P.2d 340 (1933),
20 a landlord harassed a tenant for two months, and the tenant
21 vacated the premises three months later. The court held
22 that the tenant could not recover. New York appears to hold
23 that the tenant must abandon within two months. Waldene
24 Realty Co. v. Pfalzer, 223 App.Div. 787, 227 N.Y.S. 649
25 (1928). In addition, a tenant cannot recover when the
26 wrongful acts about which he complains have ceased. Goldber
27 v. Lloyd, 110 N.Y.S. 530 (1908).

28 Rathborne vacated in November, 1972. The Munchtime
29 air conditioner was installed in 1966. The hostility
30 between Garfinkel and Rathborne began about 1970. The
31 electricity was restored in July, 1972. The buzzer never
32 worked, and the lock was broken since June, 1972. Even

OPINION IN PRIOR ACTION.

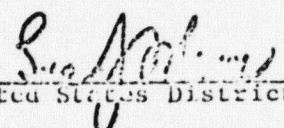
1 assuming fault on the part of Garfinkel, Rathborne, in
2 waiting as long as he did to vacate, cannot now argue that
3 he was constructively evicted.

4 The evidence does not support Garfinkel's claim for
5 \$8,200.00, which he contends he paid to clean the apartment.
6 Nevertheless, under the lease Rathborne is liable to
7 Garfi for \$500.00 for failing to give thirty days
8 notice before he vacat. This may be set off against
9 Rathborne's \$500.00 deposit which Garfinkel kept.

10 This opinion shall constitute findings of fact and
11 conclusions of law in accordance with Fed. R. Civ. P. 52(a).

12 A judgment in accordance with this opinion may be
13 entered.

14 Dated this 24th day of April, 1975.

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17 United States District Judge
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A-106

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 ----- X

4 PRESCOTT H. RATHBORNE, :

5 Plaintiff, :

6 vs. :

73 Civ. 612

JUDGMENT

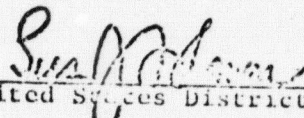
7 CITADEL MANAGEMENT CO., INC., :
8 URBAN RELOCATION CO., INC., :
9 S. GARFINKEL, EDWIN J. :
10 GLICKMAN, ODYSSEY HOUSE, INC., :
11 873 THIRD AVENUE CORP., and :
12 SALBIAN REALTY CO., INC., :

13 Defendants. :
14 ----- X

15 Based on the findings of fact and conclusions of law
16 set forth in the opinion of the Court dated this day,

17 IT IS ORDERED that plaintiff's action against the
18 defendants is dismissed and that defendant Garfinkel take
19 nothing against plaintiff on his counterclaim. No costs.

20 Dated this 24th day of April, 1975.

21 
22 United States District Judge
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ENVELOPE: EXHIBIT IN PRIOR ACTION

~~Handwritten scribbles and signatures~~

527

Not to BE
SENT

506

Repts
Gluckman
6/27/74

PRESOTT RATHBONE PRODUCTIONS, INC.
200 EAST FIFTY-THIRD STREET
NEW YORK, N.Y. 10022

Mr. Max Steinberg
6 East 45th Street
New York, New York

A-108

October 13, 1970

Mr. Max Steinberg
6 East 45th Street
New York, New York

Dear Sir:

Our Thursday, Oct. 8 appointment here at 8:00 p.m. was not the first, but one of several that you requested and missed without so much as a phone call. I am sure it was not meant as harassment - but please try and be more considerate as my time is quite valuable.

On May 12, Mr. Garfinkel and Alex of Munch Time U.S.A. were here discussing Alex's trespassing on my rented property which I have continued to allow for his and your client's convenience, much to my substantial disruption and inconvenience, for several years. (Apparently Alex also has an exclusive lease though dated 1 year subsequent to my similar exclusive lease.)

Mr. Alex seemed to imply that he intended to occupy my premises on the third and fourth floor and Mr. Garfinkel appeared to confirm his intent to help. The following morning, I removed from my front door and the adjacent floor and walls about 75 lbs. of loose, wet garbage.

On October 6, Mr. Garfinkel subjugated a friend to unnecessary obscene language and profanity inside my apartment.

The list of constant and apparent "harassments" might easily fill quite a number of pages. The need to go into them at this time is unnecessary. However, I do suggest that if the drainage is still inadequate (and apparently getting worse) on the roof over the dress and stamp store, as it has been since I moved in, it should be corrected. I shall attempt, as usual, to undertake at my expense, all and even further reasonable precautions to help by making allowances for the inadequate and disrepaired drainage.

I shall continue to try to abide by the best interest of both parties, inconvenient as they might be and have been, as I have in the past. Everything cannot be 100% right, but considering the fact I utilize 50% of the apartment space and have been the build-

ing's longest tenant, the total "inconveniences" may be more of a personality one than a tenant one. I shall, as I always have, attempt to meet any reasonable requests and suggestions you bring forth. I shall, despite the numerous "no-shows" and other problems, be glad, as always, to meet or discuss with you and your client, any problems which may arise from time to time.

Most respectfully,

Prescott H. Rathborne

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END/dn

At a Special Term Part II of the Supreme Court, held in a for the County of New York, at the Supreme Courthouse, 60 Centre Street, City, County and State of New York, on the 14th day of July, 1972

PRESENT:

HON:

ABRAHAM J. GELLINOFÉ

Justice

PRESCOTT RATHBORNE,

Plaintiff,

ORDER TO SHOW
CAUSE

-against-

Index No. 13475/72

MUNCHTIME, U.S.A., INC. and 873 THIRD
AVENUE CORP.,

Defendants.

Upon reading and filing the annexed affidavit of PRESCOTT RATHBORNE, sworn to the 14th day of July, 1972, and sufficient cause appearing therefor, let defendant 873 THIRD AVENUE CORP. or its attorney show cause, at a Special Term, Part I of this Court, to be held in and for the County of New York, at the Supreme Courthouse, 60 Centre Street, County, City and State of New York, on the ^{18th} 12th day of July, 1972 at 9:30 A.M. why an order should not issue directing said defendant to restore plaintiff's electric supply, install a front door lock-speaker-and -buzzer system and discontinue other acts of harassment against plaintiff, and further directing that until said electricity is restored and buzzer system installed, plaintiff shall owe no rent for occupancy of premises owned by said defendant and said defendant shall be further required to pay the sum of \$50.00 per day to plaintiff until such time as said electricity is restored and buzzer system installed, together with such other and further relief as this Court may deem proper.

A-110

PRESCOTT RATHBORNE,

Plaintiff,

-against-

MUNCHTIME, U.S.A., INC. and 873 THIRD
AVENUE CORP.,

Defendants.

State of New York)
County of New York (ss:

PRESCOTT RATHBORNE, being duly sworn, deposes and says:
I am the plaintiff in the within matter and as such fully familiar with the facts hereinafter set forth. I make this affidavit in support of my urgent request, as more fully described in the Order to Show Cause, to grant me some adequate relief to stop the perpetual harassment I am suffering at the hands of my landlord, 873 THIRD AVENUE CORP..

I commenced this action approximately a month ago to compel the removal of two huge commercial air-conditioning units from my terrace. The co-defendant MUNCHTIME, U.S.A., INC. is a party to this action because these units were intended to cool a store which it rented in the building where I live (200 East 53rd Street, Manhattan).

Since this action commenced, I have been subject to continuous harassment by my landlord or at its direction: this has included shutting off my electricity since July 1; attempting to axe down the front door of my apartment and, when that failed to do more than destroy its appearance, to spread kitchen grease over the locks, keyholes and knobs; continuing personal and telephone threats to my life and home; refusal to install a front door buzzer and lock system which I am entitled to under my lease and under the laws of New York City.

A-111

RATHBONE AFFIDAVIT
IN MURKIN ACTION

The last is probably the most serious item: entrance to the building is secured through a single door, at which there is no buzzer system or other entering device, (nor is there a doorman.) Thus, either the door is locked (rarely) in which event I cannot admit friends and other guests to my apartment or, as has been much more often the case, the door is left open in which case anyone can wander into the building. This is a far from insignificant situation because underlying the issue is the attempt of the real landlord (who has, as a legal cover, placed different nominal landlords in charge of separate buildings) to drive the tenants out of the block where I live in order to erect an office building. A copy of the New York Magazine article describing this is annexed hereto. Among other methods he is employing towards this end is the leasing of no less than six buildings where he has succeeded in driving the tenants out to purported "drug rehabilitation" centers. What that means, in reality, is that the street is swarming with addicts who, because there is no front door buzzer system, can enter the building with impunity.

On top of this, the landlord has secured at least a preliminary finding from the fire department to the effect that the lock to my terrace is in violation of some fire law; if this is upheld, then these addicts and other persons would have access with impunity not only to the building but to my apartment. The landlord is not doing this because of any sudden concern with a technical fire violation but because he is doing whatever he can to drive me from my home.

I understand that both under the terms of my lease and under the terms of the law of New York City, as a tenant in the building, I am entitled to a secure lock on the front door of the building, access to which would be obtained through a buzzer system connecting to tenant's apartments.

In addition, there must be a speaker system so that the tenants can know who is requesting admission (Alternatively, the landlord could have permanent doorman service--I would have no objection to this, but as this is a small building, the buzzer system seems far more feasible and is moreover provided for by my lease).

I have spoken to Con Edison several times concerning the loss of my electricity, but have been advised that the fault is not in wiring, etc., but rather in some action by the landlord such as removal of fuses (which are in the basement of the building to which I do not have access) over which they have no jurisdiction.

Unless the Court takes stringent action against defendant 873 Third Avenue Corp. to make it uneconomic for them to continue this harassment, I fear that they will succeed in destroying my home as they already nearly have. Therefore, I pray that this Court issue an order not only finding that the above are rent-impairing violations (since my apartment, occupying two floors of a small but key corner building, is obviously far more valuable to them than is the rent) but imposing a fine of \$50.00 per day against said defendant until such time as my electricity is restored and front door system installed in accordance with my lease and with law, and further an order that all harassment cease and desist so that any further harassment may result in a finding of contempt.

No previous application for the relief sought herein has been made. The reason this is brought on by Order to Show Cause is because the urgency of the situation requires immediate remedy.

Sworn to before me this
14th day of July 1972

Prescott Rathborne
CLERK OF COURT
Clerk of Court, State of New York
No. 20 644/200

Prescott Rathborne
(PRESCOTT RATHBORNE)
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SUPREME COURT OF THE STATE OF NEW YORK, SPECIAL TERM PART I, NEW YORK COUNTY
 at the Courthouse thereof, 60 Centre Street, New York, New York, 10007.

Present: Hon. HARRY B. FRANK Justice.

Prescott Rathbone

— against —

Munchtime U. S. A. Inc
et al

MINUT
 800A
 TO
 CITY CLK.
 SEP 25 1972
 CO. CLERK'S OFFICE

The following papers numbered 1 to..... read on this motion, Submitted

No. 166 on Calendar of JUL 26 1972

Notice of Motion - Order to Show Cause - and Affidavit.....

Answering Affidavit 5 & Exhibits

Replying Affidavit 5 & Exhibits

..... Affidavit.....

..... Affidavit.....

Pleadings — Exhibit.....

Stipulation — Referee's Report — Minutes.....

Filed Papers.....

MEMO

BEST COPY AVAILABLE

Upon the foregoing papers this..... Plaintiff moves for a preliminary injunction restraining plaintiff's landlord, defendant 373 Third Avenue Corp. from committing various alleged acts of harassment. The acts alleged are contested and defendants deny engaging in any campaign of harassment. The only objective evidentiary matter submitted, other than affidavits of the parties or their associates, consists of notice of a violation placed on the premises by virtue of a condition caused by defendants. The papers clearly reveal substantial and continuing conflict between plaintiff and defendants. They also reveal contested factual issues of the conditions at the premises, as well as of responsibility therefor. This Court cannot and will not, under these circumstances, issue a preliminary injunction directed toward the various complaints made, particularly since either administrative remedies are available to plaintiff by virtue of the status of the apartment as rent-controlled and otherwise. However, it appears that plaintiff's apartment is without electricity and that access to the lines necessary to effect repairs lies within defendants' control. Plaintiff asserts that this access has been denied him and the supply of electricity. While it may be reasonable for defendants to refuse plaintiff (or any electrician) access to the lines for the purpose of making repairs, no basis exists for denial of access if plaintiff is accompanied by an electrician or an agent of the supplier of electricity. Accordingly, the motion is granted to the extent, and of restraining defendants from denial of access by plaintiff or the electrical supply facilities on reasonable notice and on condition.....

THE CITY OF NEW YORK—HDA
DEPARTMENT OF RENT and HOUSING MAINTENANCE
OFFICE OF RENT CONTROL

Chief Enforcement Officer
Office of Rent Control
110 Church Street
New York, N. Y. 10007

2240-11
Bucket No.

DECLARATION DEL INQUILINO POR VIOLACIONES (HOSTIGAMENTOS)
PART I (must be filed in completely in every case) — PART I (Debe ser llenada completamente en cada caso)

MAILING ADDRESS OF LANDLORD:		2. MAILING ADDRESS OF TENANT:	
NAME 873 Third Avenue Corp. TEL NO. MU-6-1582		NAME Prescott Rathborne TEL NO. PL-5-0100	
c/o M. Steinberg, Esq.		NUMBER AND STREET 200 East 53rd Street	
6 East 45th Street		CITY, STATE AND ZIP CODE New York City, N. Y.	
ADDRESS OF SUBJECT BUILDING:		4. APARTMENT OR ROOM IDENTIFICATION	
200 East 53rd Street, New York, N. Y.		#4 and #5	
(Number and Street)		(As "No. 3," "second floor front," etc.)	
		5. NUMBER OF	
		Rooms Occupants	
		5 1	

(Insert an address where you can be reached if you leave your present address)

MAILING INSTRUCTIONS: An original and two copies of this application must have Parts I, IV, V and VI (if required) completed and filed together with accompanying documents, if any, with the Chief Enforcement Officer, at the address indicated above, by delivery or mail. Before filing the application be sure to sign the original and all copies.

PART II — DEFINITION OF HARASSMENT

Harassment is defined in the Rent Law and Regulations as any course of conduct, including the interruption or decrease of essential services which interferes with a tenant in the use of his housing accommodation, with intent to cause a tenant to vacate his apartment or to leave his rights under the Rent Law. Retaliation is defined as the removal or attempted removal of a tenant from his apartment because such tenant has taken or proposes to take action authorized or required by the Rent Law or Regulations.

There must be a continuing course of conduct, as distinguished from an isolated incident, such as the boiler or elevator. There must be willful interruption in services and objective supporting evidence that the conduct has resulted in making tenants move from their apartments.

This complaint of harassment is not to be made because of the landlord's failure to repair or decorate, or to supply hot and hot water, except when it happens a number of times and is clearly an attempt to make you and other tenants move out of the building.

Persons using this form may be summoned to testify under oath in court or before this office in connection with criminal or civil action initiated on the basis of the statement contained in this statement. To register a painting complaint, file application form A-34.2P; for all other service complaints, file application form A-34.2S. Complaints of violations such as overloading, hanging furniture tie-in, security deposit, etc., should be filed on application form A-60. Appropriate forms may be obtained at your local District Rent Office.

(For Principal Office Use Only)

PART III — NOTICE TO SHOW CAUSE

TO: THE LANDLORD INDICATED ABOVE:

This is a statement of violations filed by your tenant which, if true, indicates that you are engaging in a course of conduct constituting harassment.

Now, therefore, you are hereby required to SHOW CAUSE before the Office of Rent Control at an informal hearing to be conducted at its Principal Office located at 110 Church Street, New York, N. Y., on _____ 197__ at _____ A.M., P.M., WHY a finding of harassment pursuant to §Y51-11.0 of the Administrative Code and Section 61 of the Regulations should not be made against the housing accommodation affected by this application.

Date of Mailing: _____ Chief Enforcement Officer

PENALTIES FOR PROVEN VIOLATIONS: Persons adjudged guilty of harassment and illegal or constructive eviction may be prosecuted for a crime punishable by imprisonment for not more than one year or by a fine up to \$5,000, or both. In addition, a permanent injunction against future violations of the Rent Law may be obtained and a civil fine of up to \$1,000 may be levied by the Administrator for each violation.

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PLEASE USE PART VI IF IT IS NECESSARY TO COMPLETE ANY ITEM BELOW IN GREATER DETAIL.

PART IV — GENERAL INFORMATION

IF, AFTER READING THE ABOVE DEFINITION YOU BELIEVE A COURSE OF CONDUCT HAS OCCURRED WHICH CONSTITUTES HARASSMENT PLEASE CHECK AND COMPLETE ONLY THE FOLLOWING ITEMS APPLICABLE TO YOUR COMPLAINT.
(Esta Solicitud debe ser escrita en Ingles)

- When you took occupancy: 1966 Current rent charged: \$500 monthly
- Is rent being accepted? yes ☒ no ☐ Are receipts being given? yes ☐ no ☒
- Give total number of apartments (units) in building: occupied 4 vacant
- If there are vacant apartments (units), indicate whether they are locked, boarded up or being altered:
- Have you been notified that the building is scheduled for demolition or alteration? yes ☒ no ☐
- Is a "work permit" from the Department of Buildings on display? yes ☐ no ☒
- Is there a tenant's committee in your building? yes ☐ no ☒ If yes, indicate Name, Address and Telephone Number of the Chairman of the Committee.
- Are you willing to testify in court against your landlord? yes ☒ no ☐

PART V — NATURE OF HARASSMENT COMPLAINT

(Mark X in appropriate box and give specific details, such as dates, places, acts or statements made by your landlord or his agent which you claim were intended to harass you.)

5. ☐ I was offered \$ by (name) to vacate my apartment by (date) 197
6. a. ☒ I was threatened with eviction if I refused to vacate my apartment. b. ☒ I was told that essential services would not be provided.
- c. ☐ I was offered another apartment. d. ☐ After I refused the offer, the services were decreased. (State details in Part VI).
- e. ☐ After I refused the offer, I received threats of eviction from (name)
7. ☐ I was served with legal dispossession papers (attach copy). a. ☒ I retained a lawyer. Give name and address Bradley Davis, 1235 Park Avenue, New York 10028
- b. ☐ Claim against me is untrue for the reasons set forth in Part VI, also give status of legal proceeding.
8. ☐ My landlord is retaliating against me because:
- a. ☐ I filed the following applications with the Office of Rent Control:
- | Docket No. | Date | Disposition |
|-----------------|-----------------|-----------------|
| <u> </u> | <u> </u> | <u> </u> |
| <u> </u> | <u> </u> | <u> </u> |
- b. ☐ I filed complaints with the Office of Code Enforcement on (Dates)
- c. ☒ Other (Describe by nature and date of action taken by you against landlord in Part VI)
19. ☒ I have been illegally evicted, "locked-out" or otherwise excluded from my apartment.
20. ☒ Personal property in my apartment has been damaged, destroyed or removed by:
- a. ☒ Landlord or agent. b. ☒ Lack of adequate security in building. c. ☐ Illegal eviction of tenant.
21. ☒ Did you take or do you propose to take any legal action against your landlord for the illegal eviction or damage to your property? yes ☒ no ☐
22. ☐ Landlord has intentionally decreased, withheld or interrupted the following essential services: heat ☒ hot water ☐ cold water ☐ electricity ☒ superintendent or janitor ☒ garbage ☒ or elevator ☐ Give date and duration of each interrupted service in Part VI.

PART VI — FURTHER STATEMENT OF TENANT (OTRAS DECLARACIONES DEL INQUILINO)

(State in this space all the additional facts which may assist the Chief Enforcement Officer)

The reason, I believe, for the incredible harassment being imposed upon me is that the block on which I live is being assembled for an office building. The apartment I occupy is in a key building because it is at the corner of 53rd street and third avenue. Since each building is "bought" by a different nominal landlord, it is not easy to prove the assemblage. However, it has been shown in New York Magazine of August 30, 1973 my building being in fact one of those purchased by the speculators. On the block, there are many boarded-up buildings and no less than six "drug rehabilitation" centers which is one of the major weapons used by assemblers to deteriorate a block so that tenants will be forced to move.

I have read the foregoing and I hereby affirm under the penalties provided by law that the contents thereof are true of my own knowledge.
Declaro conforme a la ley que he leído lo antecedente cuyo contenido es verdadero.

It is not necessary that the foregoing be sworn to but false statements may subject you to the penalties provided by law.

No es necesario que el documento sea bajo juramento; sin embargo, declaraciones erróneas pueden resultar en un delito de acuerdo con la ley.

Dated (Fecha) JUL 18 1972

HARASSMENT COMPLAINT

I will list only the most major harassments which I have suffered; in fact, virtually my entire life in the building has become a harassment.

(1) Although my lease specifically required it, and although I understand it in any event is required by law, there is only a single door to the building with no buzzer connection to the apartment. Therefore, either the door is locked, in which event I cannot admit visitors to my apartment, or it is open in which case drug addicts and other degenerates can and do wander into the building. I have no control over whether it is locked or opened. Moreover, part of my apartment is a roof-terrace which opens directly upon my living room; recently, the landlord has instigated the fire department to file a violation against a lock I have at the top of a staircase leading to the terrace. I do not know the technicalities of the fire law, but I do know that the landlord has filed this complaint because if I have to remove the lock there will be direct access from the street to my apartment to anyone who wishes to enter, simply by walking in through an open front door, walking up the staircase to my terrace, and entering through the terrace door.

(2) For this entire month, my electric supply has been shut off. I called Con Edison, but they said there was no wiring problem, that the problem was the landlord's domain. The fuse box and other essentials to provide me with electricity are in the landlord's possession. The landlord refuses to give access to Con Edison to make repairs. Also, for a long time there have been no lights in building hallways.

(3) Several weeks ago, my front door was axed. I asked the landlord to repair it, but he refuses to do so. On several occasions since, I have found kitchen grease poured all over my front door. This undoubtedly is being done to harass me, but I cannot prove it because the unlocked front door means everyone can wander in and out of the building as he pleases.

(4) On many, many occasions the landlord has threatened my life if I do not move out of the building. I have witnesses to a number of these occasions.

(5) My plumbing is defective and my roof is leaking. The landlord refuses to make any repairs. The roof leaks are destroying my furniture.

(6) Because of the strange way the building is constructed, the front door to my apartment is on a different floor than my apartment. Therefore, by terms of the original lease, the landlord was required to install a speaker system from that door to my living room. That speaker has been broken for months but the landlord has refused to fix it. This, of course, is a different door than the front door to the building where such a system, although required has never been installed.

(7) The halls in the building are virtually never cleaned and garbage piles up on the sidewalk outside.

(8) I have been receiving mysterious telephone calls at odd hours of the night. Because of all of the above other harassments, I suspect my landlord although I cannot prove this. I know that this is a method routinely used by landlord trying to drive tenants out of buildings.

I do hope that the rent commission will give me some assistance. All I am asking is that I be allowed to live in my apartment in relative peace. I know, however, that the landlord has no intention of allowing this because he wants me out of the building, and only your assistance can protect me.

A-117

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

In the Matter of the Application of
PRESCOTT RATHBORNE,
Petitioner,
For an Order Pursuant to CPLR Article 78
to Compel the
HOUSING AND DEVELOPMENT ADMINISTRATION,
Respondent
to Conduct a Hearing and Reach a
Determination on a Harassment Complaint.

PETITION

The Petition of PRESCOTT RATHBORNE respectfully alleges

1. That at all times hereinafter mentioned and until November of 1972, I was a tenant at 200 East 53rd Street in Manhattan in a rent-controlled apartment.
2. I first rented that apartment in 1965. In approximately 1969, some developers became interested in assembling the property on the block in order to construct a large office and apartment building.
3. By 1971, these developers had acquired a significant portion of the block and were negotiating with my landlord for purchase of the building where I lived.
4. I was the only rent-controlled tenant in the building; therefore, if the landlord could cause me to move, the value of his property (which occupied the subway corner of the block) would increase significantly.
5. Between 1965 and 1970, I had made very extensive renovations to the apartment and had expended extensive sums on a roof garden which was part of the apartment because I intended to live there for the rest of my life. Therefore, I had no desire to move and, moreover, would have had to receive a very significant sum in order to compensate me for my actual expenditures, not to mention the significantly higher rent I would have to pay in decontrolled premises.

ARTICLE 78 PETITION

6. Therefore, the landlord began a continuing process of harassment against me which included, among other things, turning off my electricity for an entire month, axing the door to my apartment, removing the lock from the front door to the building thus permitting drug addicts (who had been moved to the block as part of the developers' scheme to drive tenants away) to enter and congregate freely, threatening my life and property, and numerous other acts all of which were enumerated in my complaint to the Rent Commission.

7. As a result of all this, in July of 1972, I filed a harassment complaint with the Housing and Development Administration. This complaint bears HDA File Number 2240-HL

8. The filing of the complaint in no way stopped the harassment and, as a result of this harassment, which was causing serious damage to my health and property, I was forced to vacate the apartment in November of 1972.

9. At the time I vacated the apartment, no hearing had been held nor had any determination been made.

10. According to the Housing and Development Administration, in November of 1973, more than one year after I had vacated the apartment, a letter was sent to me to the effect that respondent assumed that the harassment situation had been cured. I never received that letter.

11. According to the Housing and Development Administration, a copy of that letter was sent to the person who had represented me in 1972. I do not know whether or not he received that letter, but in any event he was not representing me at that time and in fact was not even practicing law for that period.

12. In any event, the Housing and Development Administration was correct in assuming that the harassment situation had been "cured"

ARTICLE 78 PETITION

in the sense that I was no longer being harassed by my former landlord. However, the reason it had been "cured" was that these very acts of harassment had forced me to move. To call this a cure is like saying that a disease is "cured" by death.

13. In the interim, not hearing anything from the Respondent, I commenced an action in the United States District Court for the Southern District of New York against my landlord for the very serious damage I had suffered. This action came to trial in October of 1974, but has not yet been determined, among other reasons for those set forth below. The trial judge was Judge Solomon who regularly presides in the Oregon District Court.

14. Being from Oregon, Judge Solomon understandably has little personal knowledge of the landlord-tenant situation in New York. Therefore, after the trial, I inquired whether the Housing and Development Administration, which is the agency with expertise in this area, had come to any determination which might assist Judge Solomon in reaching his decision. The Housing and Development Administration advised that the file had been closed on the assumption that the harassment had been cured in November of 1973.

15. I thereupon responded that whatever the case may have been in November of 1973 had nothing to do with whether I had been harassed in July, 1972 when I filed my complaint, or for a long period before and after that time, and requested a hearing and determination on this matter. However, respondent has rejected this request. A copy of all correspondence with respondent is annexed as Exhibit A.

16. I also have written to Judge Solomon advising of my request for a hearing and determination by respondent and requesting that he withhold his decision pending such determination under the doctrine of Primary Jurisdiction. A copy of that letter is annexed as Exhibit B.

ARTICLE 78 PETITION

17. There are several reasons why a determination by Respondent is crucial in this matter:

A. The Housing and Development Administration is the administrative agency peculiarly familiar with the landlord-tenant situation in New York City and has conducted a number of extensive investigations into landlord harassment. It is therefore far more competent to determine the question of harassment than is a Judge who as far as I am aware has never resided within 3,000 miles of New York City and therefore has no reason to have expertise in the intricacies of New York City rent control.

B. Under the statute (Section 71(5) of the Housing Rent Regulations, if Respondent finds I have been harassed, I will be entitled to treble damages. I understand that this is a statutory penalty which cannot be granted unless there is such an administrative determination. Therefore, the amount I can recover will significantly be affected by Respondent's determination.

18. As Exhibit A indicates, Respondent seems to be taking the position that I cannot have a harassment hearing because I failed to file for one within sixty days after I vacated the apartment. I respectfully submit that this is an absurd and unreasonable position since I had a pending harassment complaint when I did vacate. Certainly filing prior to vacate comes within whatever statute of limitations is implied by the sixty-day-after-vacating provision.

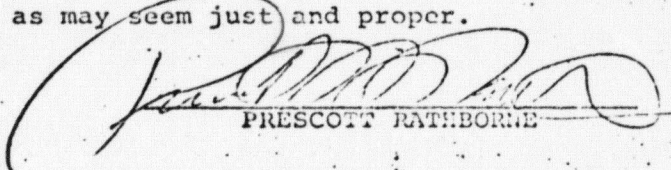
19. No one can be harmed if the relief I seek is granted. If it is in fact determined that the landlord did not harass me, he will not be liable for damages. On the other hand, if the relief I seek is not granted, I will be denied any possibility of treble damages and moreover will be denied determination in this crucial area by the administrative agency with particular expertise on the subject.

ARTICLE 78 PETITION

20. The reason this is brought on by Order to Show Cause rather than by ordinary motion is that the pending matter before Judge Solomon mandates that as prompt a disposition be made as possible; in particular, he should know as soon as is possible whether he will be given the benefit of administrative expertise in arriving at his decision.

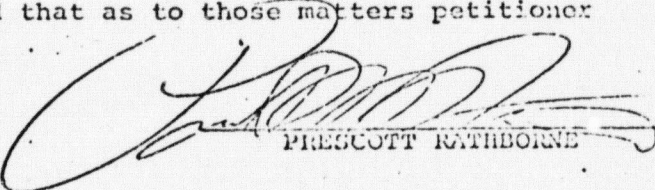
21. No previous application for the relief sought herein has been made, and petitioner has no adequate remedy at law.

Wherefore, your petitioner prays that an order be granted directing the Housing and Development Administration to hold a hearing and reach a determination on my harassment complaint, and that I have such other and further relief as may seem just and proper.

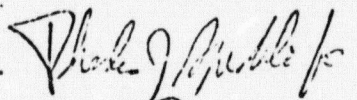

PRESCOTT RATHBORNE

State of Louisiana)
Parish of Orleans (ss:

PRESCOTT RATHBORNE, being duly sworn, deposes and says that he has read the foregoing petition; that he is the petitioner in the within action; that the petition is true to petitioner's own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters petitioner believes them to be true.


PRESCOTT RATHBORNE

Sworn to before me this
15th day of April, 1975


Notary Public
Parish of Orleans
State of Louisiana

A-122

March 21, 1975

Hon. Gus Solomon, Senior Judge
United States District Court, Dist. Oregon
Portland, Oregon 97205

Re: Rathborne v. Garfinkel et ano
73 Civ. 612

Honorable Sir:

Pursuant to the enclosed documents, the above plaintiff has filed for a hearing on his pending harassment matter before the New York City Housing and Development Administration

The Housing and Development Administration is the agency with particular expertise in this area, being responsible for the supervision of all rent-controlled apartments in New York City, and have conducted several major investigations of landlord harassment. See, e.g., New York Times, June 6, 1972, p.25, col.1; September 22, 1972, p.47, col. 6. Therefore, under the doctrine of primary jurisdiction, most clearly enunciated by the United States Supreme Court in U.S. v. Western Pacific Railroad Co., 352 U.S. 59 (1956), the District Court should stay making any determination in this action pending the determination of the administrative agency:

"Primary jurisdiction applies where a claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its findings." See also Maddock v. Miller, Inc. v. U.S. Lines, 365 F.2d 98 (2d. Cir. 1966); C.A.B. v. Aeronatic Travel Corp., 341 F.Supp. 1271 (E.D.N.Y. 1971). Indeed, where, as here, the primary jurisdiction doctrine is applicable, it is not subject to waiver and must be applied even if the parties to the action do not request its application. Louisiana & Arkansas Railway Co. v. Export Drum Co., 359 F.2d 311, 314 (5th Cir. 1966)

In this matter, the primary jurisdiction doctrine should not effect dismissal of the case, but rather should stay the court's determination pending the determination of the administrative agency:

"Primary jurisdiction...does not defeat the court's jurisdiction over the case, but coordinates the work of the court and the agency by permitting the agency to rule first and giving the court the benefit of the agency's views."

Mercury Motor Express Company v. Brinke, 478 F.2d 1086 (5th Cir. 1973)

"The trend of the practice in the District Courts in recent years seems to be to hold judicial actions in abeyance, rather than dismiss them, in which questions requiring resolution by administrative authority are present."

U.S. v. Kansas City Southern Railway Co., 217 F.2d 763 (8th Cir.1955)

See also Montano Company v. F.D.C., 463 F.2d 799, 807 (D.C.Cir.1972);
Southern Railway Co. v. Comas, 484 F.2d 145 (6th Cir. 1973)

While the determination of the administrative agency presumably will resolve the harassment question, there still will be a considerable issue before this court, i.e. the question of damages, since the administrative agency does not assess damages under the applicable statute (Housing Rent Regulations, Section 71 (5) contained in the Unconsolidated Laws of New York State) but simply gives the tenant the ability to obtain damages in a legal forum. However, at least one item of damages will be affected if there is an administrative finding of harassment because the above statute allows any tenant who has sustained his harassment complaint to recover treble damages. Thus, for both procedural and substantive reasons, this Court should stay its determination pending the ruling of the Housing and Development Agency.

The reason this matter was not raised at or before trial was that at that time all parties believed that the Rent Commission had closed its file on the harassment issue with no determination. As the enclosed documents show, the matter was revived subsequent to trial. However, primary jurisdiction is a doctrine which applies precisely when there has been a court proceeding as per the cases cited above.

At this point, plaintiff requests a stay of determination pending the determination of the administrative agency as to whether or not to schedule a hearing which determination should be made in a very short time. If and when the hearing is scheduled, plaintiff will request a further stay pending the determination of that agency. There is no way in which defendants can be harmed by allowing the Court to gain the benefit of this agency's expertise.

I have discussed this matter with Mr. Jacobs, plaintiff's attorney of record in the within matter, and he has no objection to this stay. He will, however, be submitting his reply brief in accordance with the Court's prior instruction, understanding, however, that the decision may be stayed pending administrative determination.

Respectfully submitted,

BDD/mns

Bradley B. Davis

cc: Max Steinberg, Attorney for Defendants
Howard Jacobs, Attorney for Plaintiff
Prescott Rathborne

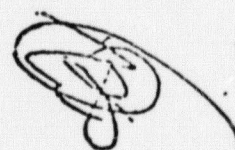
(1) Since presumably the administrative agency will give all parties a full opportunity to be heard, unlike in the decontrol situation being considered by this Court, its decision presumably will be binding as to those matters before it.

TO: Kenneth Gladstone - Marvin B. Tepper - Arnold Rabinov
FROM: Edwin J. Glickman
SUBJECT: 873-875 Third Avenue
DATE: November 28, 1972

Attached herewith you will find a copy of a letter dated November 20, 1972 from Prescott Rathborne addressed to several parties with a number of carbon copies sent by Mr. Rathborne to other parties. . . .

As background to this matter, Mr. Rathborne had called our offices in early September and requested an appointment. Arnold and I met with him on September 7th at our office, at which time Mr. Rathborne offered to negotiate an agreement under which he would surrender occupancy of his premises to us. We explained to Mr. Rathborne that while we are the fee owners of the property we were not his landlord, since the property is not leased by a corporation controlled by Sol Garfinkel. Accordingly, Mr. Rathborne is a tenant of Mr. Garfinkel's. We further explained to Mr. Rathborne that we did not know whether we would be able to work out an agreement with Mr. Garfinkel under which we would acquire the net lease on the property without which we would have no interest in obtaining possession of Mr. Rathborne's apartment. We told Mr. Rathborne that if, at some future time, we worked out arrangements with Mr. Garfinkel that we would be happy to then talk to Mr. Rathborne about his apartment. At that point Mr. Rathborne asked if there wasn't some way in which he could still be useful to us by bringing certain charges or offering to testify against Mr. Garfinkel in any proceedings we might want to bring. We explained to Mr. Rathborne that we were not in any litigation with Mr. Garfinkel and had no intention of bringing any kind of proceedings. We again thanked him for his interest and concluded the meeting.

EJG:hk



URBAN (CITADEL MOTION TO DISMISS)

PLEASE TAKE NOTICE that upon the annexed affidavit of Elliot F. Topper, sworn to the 10 day of December, 1975, and the annexed statement pursuant to this Court's General Rule 9(g), upon all the prior proceedings had herein and the papers and exhibits referred to and submitted in support of the Notice of Motion dated October 22, 1975, submitted on behalf of the Madison defendants on their motion for summary judgment and a protective order, the undersigned will move this Court in Room 2703 of the United States Courthouse, Foley Square, New York, New York, on the 14 day of January, 1976, at 9:30 a.m. or as soon thereafter as counsel can be heard for the following relief:

(1) summary judgment pursuant to Rule 56 of the Federal Rule of Civil Procedure dismissing the amended complaint herein on the ground that there are no issues of fact and as a matter of law plaintiff is not entitled to the relief sought;

(2) an order pursuant to Rule 12(c) of the Federal Rules of Civil Procedure dismissing the second cause of action of the amended complaint on the ground it does not state a claim upon which relief can be granted;

(3) for a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure precluding plaintiff from conducting further discovery of defendants Citadel and Urban, on the ground that by stipulation in Rathborne I it was agreed that no further discovery could be held in any subsequent action; and

(4) for such other and further relief, including costs and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York
December 10, 1975.

A-126

URBAN/CITADEL 9G STATEMENT

In accordance with Rule 9(g) of the General Rules of this Court, defendants Citadel and Urban make the following statement:

1. Citadel and Urban adopt, confirm and agree that there are no genuine issues to be tried with respect to the material facts as set forth in the Rule 9(g) statement submitted by the "Madison" defendants in support of their motion.

Citadel and Urban state that there are no genuine issues to be tried with respect to the following material facts:

2. Plaintiff was afforded full and complete discovery in Rathborne I and by stipulation in that action is precluded from further discovery in Rathborne II, the instant action.

3. Citadel and Urban were retained by the Madison defendants on February 11, 1971 with respect to the building in which plaintiff was a tenant.

4. At no time during plaintiff's tenancy did he ever have any contact or communication with anyone from Citadel or Urban or with anyone even purporting to act on behalf of Citadel or Urban.

5. Neither Citadel nor Urban did anything to interfere with plaintiff's tenancy.

6. The only Citadel and Urban activity that plaintiff complains of is that they caused certain signs to be posted on the "block" and that they caused the placing of tin sheeting windows in vacant buildings on the "block".

URBAN / CITADEL 9/6 STATEMENT

7. As stated in plaintiff's answers to interrogatories, the signs began to go up in the spring of 1971 and by November 1972 there were approximately three signs on 53rd Street, one sign on 52nd Street and two or three signs on Third Avenue. The signs were each approximately five feet long and three feet wide.

8. The signs announced the policy of not re-renting any vacant space, gave the name Urban, its address and telephone number and as required by law, stated it was not a governmental agency.

9. No signs were posted at plaintiff's building.

10. Administrative Code of the City of New York, Section C 26-80.0 requires the sealing of a vacant building.

11. Affixing tin sheeting over windows is an approved and recommended method of sealing a vacant building to comply with the Code.

12. No tin was applied to plaintiff's building and the nearest tinning was four or five buildings away from plaintiff's building.

13. Plaintiff commenced a prior action against Citadel and Urban, as well as other defendants in this Court, 73 Civ. 612, Rathborne I, alleging the same claims as those in the instant action, Rathborne II. Rathborne I was discontinued as to Citadel and Urban and other defendants by stipulation dated August 24, 1974.

URBAN/CITADEL 9-6 STATEMENT

14. Rathborne I was tried before visiting Judge Gus J. Solomon and by Judgment dated April 24, 1975, the action was dismissed. That decision was affirmed, from the bench, by the Court of Appeals for the 2nd Circuit on or about December 4, 1975.

15. Plaintiff testifying in Rathborne I stated that the only reason that he vacated the premises was because of the acts committed by 873 Third Avenue Corp. the only defendant in that case by the time of trial.

16. Neither Citadel nor Urban engaged in any conduct which constituted harrsment of plaintiff nor did these defendants authorize or encourage or know of any such conduct towards plaintiff by any other person or entity.

Dated: New York, New York
December 10, 1975

TURCHIN & TOPPER

By: B/ELLIOT F. TOPPER

A Member of the Firm
Attorneys for defendants
Citadel Management Co., Inc.
Urban Relocation Co., Inc.
Office & P.O. Address
60 East 42nd Street
New York, New York 10017
(212) MO 1-0420

The following items set forth in the 9(g) statement filed by the moving party are not admitted by the plaintiff, and there is a genuine issue to be tried concerning each of them:

Item 2, except as specifically limited by the aforesaid stipulation

Item 5

Item 6

Item 7 as to size of signs

Item 8 insofar as it refers only to a portion of the content of the signs

Item 10

Item 12, except agrees that no tin was applied to plaintiff's building.

Item 13, insofar as that action involved a purported conspiracy with the lessee-landlord, and insofar as that action was discontinued without prejudice

Item 15, referring to the findings of Judge Solomon on the matter

Item 16

Item 22 insofar as it claims that plaintiff admitted vacating his apartment solely because of the abuses of the named parties

Item 23 insofar as knowledge of the increased value of the building were plaintiff to vacate in the eyes of the assemblers may have provoked the alleged abusive acts.

Item 24

Item 25 insofar as it claims that the rent control law provides for administrative proceedings in harassment matters other than between landlord and tenants.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PRESCOTT H. RATHBORNE,

Plaintiff,

- against -

CITADEL MANAGEMENT CO., INC.,
URBAN RELOCATION CO., INC.,
EDWIN J. GLICKMAN,
SALBIAN REALTY CO., INC.,
SILTAN DEVELOPMENT CORP.,
WOAS PROPERTIES CORP. and
MADISON ASSOCIATES,

Defendants.

A F F I D A V I T

75 Civ. 2392 (CLB)

-----x
STATE OF NEW YORK }

COUNTY OF NEW YORK }

ss:

Elliot F. Topper, being duly sworn, deposes and says:

I am a partner in the firm of Turchin & Topper, attorneys
for defendants Citadel Management Co., Inc. (hereinafter "Citadel")
and Urban Relocation Co., Inc. (hereinafter "Urban").

I make this affidavit in support of the motion by Citadel and
Urban for summary judgment pursuant to Federal Rules of Civil Procedure,
Rule 56, dismissing the entire amended complaint, for an order pursuant

Citadel and Urban had no communication with plaintiff.

It is undisputed that Citadel or Urban had absolutely no contact or communication, whether indirectly or directly, with plaintiff during his tenancy. His only communication with them was his letter of November 20, 1972, when he moved out and made his libelous accusations referred to in the Madison defendants' answer herein.

Plaintiff's testimony in his deposition in Rathborne I at pp. 36-7 establishes this lack of communication:

"Q. Let me read to you Interrogatory No. 1 served on you by defendants Citadel and Urban and the answer which I received this morning from you to that interrogatory. I want to ask you whether the answer is accurate, to your own personal knowledge. The interrogatory is this:

"1. State whether it will be claimed any person communicated with plaintiff at any time either directly or indirectly, on behalf of Citadel or Urban.

"The answer is 'No'

"Is that answer accurate, to your knowledge"

"A. In behalf of Citadel and Urban, yes, as far as I can recall; yes, sir.

"Q. The answer is accurate?"

"A. Yes."

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Avenue Corp., with Mr. Sol Garfinkel as principal, for a term not expiring until 1993.

Pursuant to the typical contract entered into between Citadel and Urban on the one hand and one of the Madison defendants on the other hand with respect to the buildings on the block, Citadel was to manage the building for a fee of 5% of the net rent collected and Urban was to relocate tenants for a fee of \$500.00 per tenant and was authorized to pay up to \$2,000 or \$3 000 per tenant to either assist or induce the tenant to relocate. , with particular reference to plaintiff's building, there was to be no relocation of tenants since the Madison defendants were not in possession of the building and there could be no interference in the relationship between tenants and the net lessee, 837 Third Avenue Corp. And with the existence of the net long term lessee, Citadel's management duties were limited to simply overseeing the net lessee's management responsibilities.

As will be demonstrated herein neither Citadel nor Urban had any communication with plaintiff and with respect to the Citadel and Urban activities complained of, tinning and posting signs, both were proper and legal and neither constitutes an actionable wrong.

TOPPER SUPPORTING AFFIDAVIT

to Rule 12(c) dismissing the second cause of action and for a protective order precluding further discovery pursuant to Rule 26(c).

The affidavits of Thomas Moreland, Esq. and Edwin J. Glickman, submitted on behalf of the Madison defendants, set forth virtually all of the relevant facts.* While endeavoring not to burden the Court by a repetition of these facts, certain additional facts are submitted herewith on behalf of Citadel and Urban.

The business of Citadel and Urban.

Citadel and Urban are in the business of managing buildings and assisting in the relocation of tenants, respectively. Both businesses are operated by Mr. Seymour Shapiro. The Madison defendants in February 1971 retained Citadel and Urban with respect to their assembling real estate in the block bounded by Second and Third Avenues and East 53rd and East 52nd Streets in Manhattan. Contracts were entered into between Citadel and Urban and certain of the Madison defendants with respect to each parcel in the assemblage.

The fee title to the building occupied by plaintiff, designated as 200 East 53rd Street, was owned by one of the Madison defendants. That building had been net leased by a prior fee owner to 873 Third

* Because the applicable law is the same as in the Madison defendants' motion, Citadel and Urban have not submitted a separate brief but will adopt and rely on the authorities set forth in the Madison brief.

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What Citadel and Urban did: posted signs and sealed vacant buildings.

The only evidence of any conduct by Citadel or Urban complained of by plaintiff is that they caused the posting of certain signs on the block and the tinning of windows of vacant buildings. There is not a shred of evidence that either Citadel or Urban did anything else that plaintiff complains of. At page 337 of his deposition in Rathborne I, plaintiff stated:

"Q. Do you have any knowledge of any acts, specific acts - and I used the word 'knowledge' rather than 'belief' - do you have any knowledge of any specific acts taken by Citadel ... or any of its representatives, directed against you?

"A. Well, I am not sure even that you put up the signs or you had the office there or you had the tinning, or exactly what your connections were, so since I don't know for sure at this moment that the office - I think it was three buildings away - legally was Citadel's, I have to say no, I don't have any knowledge."

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And at p. 338:

"Q. Mr. Rathborn, what was it about the presence of the office on the block that constituted an act of harassment directed against you other than the fact that it was merely an office on the block?

"A. You had your employees there. Your reputation was with you, and, in addition, there was the tinning and the signs."

And with respect to Urban at pp. 339-40:

"Q. What steps were taken to try to relocate you by someone from Urban ...?

"A. Factually, I don't know. Or maybe I should say, with knowledge, I don't know."

Similarly, plaintiff's answers to the interrogatories served on behalf of Citadel and Urban demonstrate that the only conduct of Citadel and Urban complained of by plaintiff was tinning and posting of signs. Except for complaints about tinning and posting signs, plaintiff's answer to questions about any claimed connection between Citadel and Urban and the alleged acts of harassment was repeatedly:

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"At this time without benefit of discovery plaintiff is unable to answer this interrogatory." That answer was made on May 8, 1974. Discovery was full and ample and there has been no change in that answer: the reason is that all Citadel and Urban did was tin and post signs.

The posting of signs and tinning of vacant buildings was legal and proper.

Urban posted 6 or 7 signs on the block about five feet by three feet in size, announcing that there would be no re-renting of any vacant apartment in the buildings taken over by the Madison defendants. The signs gave the address and telephone number for Urban and said: "Buildings being vacated by Urban Relocation Co., Inc." As required by law the signs also stated they were not a governmental agency. Because plaintiff's building was occupied under the long term net lease to 873 Third Avenue Corp., Urban had nothing to do with plaintiff's building: there was no sign on plaintiff's building. It is submitted that the posting of such signs, approved by the Courts and by statute, could in no way be construed as harassment or interference with plaintiff's tenancy.

Plaintiff also complains about the tinning of windows in the vacant buildings on the block. This was done as required by the Administrative Code of the City of New York, Section C 26-80.00. That Section states:

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"A vacant building which is not continuously guarded shall have all openings sealed in a manner approved by the commissioner, and it shall be the duty of the owner thereof promptly to make any repairs that may be necessary for the purpose of keeping such building sealed."

Moreover, plaintiff's building was never tinned: the nearest tinning took place four or five buildings away from plaintiff's building. This again cannot be construed as in any way interfering with plaintiff's tenancy.

There was no intent to harm plaintiff.

Since the Madison defendants were under no obligation to re-rent the buildings assembled, Citadel and Urban did nothing improper in publicly stating the obvious fact that there would be no re-renting so as to prevent anyone from being misled. Nor was there anything improper about their endeavoring to preserve the premises and prevent mishaps by sealing the buildings. The law has approved the posting of such signs and indeed requires the sealing of vacant buildings. Citadel's and Urban's conduct was justified, and in fact required by law, and motivated solely by the economic and business purposes of their clients, the Madison defendants, to redevelop the property. There was no intention to harass plaintiff or interfere with his tenancy. Thus, as a matter of law, there can be no basis for plaintiff's claim of harassment given these facts.

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Plaintiff never complained to Citadel, Urban or its clients;
he admitted 873 Third Avenue Corp. caused him to leave.

Furthermore, at no time during his tenancy, did plaintiff complain to any of the Madison defendants, Citadel, or Urban that any of them in any way interfered with his tenancy. In fact, perhaps the clearest proof that neither Citadel nor Urban interfered is that in Rathborne I, plaintiff testified that it was Sol Garfinkel and his 873 Third Avenue Corp. which caused him to vacate the premises. At p.60 of the trial transcript, he stated:

"Q. Mr. Rathborne, other than for the acts that happened to you in this case, would you have left that apartment?

"A. Yes, it was an incredible apartment; I would not have left for the rest of my life. I would have kept it."

Not only that, but the Court at the end of the case, in summarizing plaintiff's claims, stated without objection from plaintiff's attorney; "Mr. Rathborne says he moved because of psychiatric problems that were etimulated by Mr. Garfinkel's action" (332).* By 1970, before

* The trial Court's Judgment in favor of Garfinkel and against Rathborne has been upheld, on appeal, in a decision delivered from the bench.

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Citadel and Urban were even retained by the Madison defendants, plaintiff claimed "it was like being under seige in a fortress." (40).

Plaintiff doesn't have a case and the facts demonstrate that summary judgment should be granted to Citadel and Urban dismissing the amended complaint herein.

Moreover, the second cause of action, alleging the same acts with respect to other tenants on the block as well as other blocks in the city, fails to state a cause of action. Plaintiff cannot seek damages for alleged wrongs to others.

Lastly, in view of the stipulation in Rathborne I, plaintiff should be precluded from seeking any discovery from Citadel or Urban. As part of that stipulation and in return for agreeing to a discontinuance, plaintiff agreed that he had full and ample discovery. While perhaps this application is premature, since no notice has yet been served for discovery of Citadel and Urban, given the notice served on the Madison defendants, we urge that the stipulation be upheld which of course would preclude any prospective discovery of Citadel and Urban.

For all the foregoing reasons, it is submitted that this motion should be granted in all respects, and (1) summary judgment be granted dismissing the entire amended complaint; or alternatively (2) an order be entered dismissing the second cause of action; and (3) an order be entered precluding any discovery of the defendants, including Urban and Citadel.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRESCOTT H. RATHBORNE,

Plaintiff,

-against-

75 Civ. 2392

CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., EDWIN J. GLICKMAN,
SALBIAN REALTY CO., INC., SILTAN
DEVELOPMENT CORP., WOAS PROPERTIES CORP.,
and MADISON ASSOCIATES,

AFFIDAVIT IN OPPOSITION

.Defendants.

State of New York)
County of New York) ss:

BRADLEY B. DAVIS, being duly sworn, deposes and says:

I am the attorney for the within Plaintiff and as such, as well as a resident of New York City throughout the period in question, am fully familiar with the facts hereinafter set forth. I make this affidavit in opposition to (1) the motion of the "Madison Defendants"¹ to (a) dismiss the complaint for failure to state a cause of action; (b) dismiss the complaint due to the statute of limitations; (c) dismiss the complaint against Madison Associates for failure of service of process; (d) strike the notice of deposition of Madison Associates; (2) the motion of Defendants, Urban Relocation and Citadel Management to dismiss the complaint and to deny pre-trial depositions of any defendant.

The Underlying Circumstances of the Complaint

A review of the underlying facts makes clear that Plaintiff's causes of action can be sustained on many theories, and the motions to dismiss should be denied.

¹ As defendants Glickman, Salbian, Siltan, WOAS and Madison have chosen to style themselves in the moving papers.

DAVIS OPPOSING AFFIDAVIT

In 1966, Mr. Rathborne moved into a rent-controlled apartment at 200 East 53 Street¹, Manhattan. It was a large duplex apartment with a roof terrace of over 1,000 square feet. However, it was in a condition requiring extensive renovation. As it was rent-controlled, Mr. Rathborne had every reason to expect that as long as he paid his rent, except for remote circumstances (which in fact never occurred), he could expect to reside there the rest of his life. Therefore, with the landlord's knowledge and consent he invested very considerable sums in permanent improvements towards creating a luxurious living environment including a roof garden which won accolades from the New York City Parks Recreation and Cultural Affairs Administration (see annexed Exhibit P).²

At that time, and for some time thereafter, the block where Mr. Rathborne resided was both esthetically and culturally one of the more attractive areas in Manhattan as the New York Magazine article, incredibly annexed to the Madison Defendants' moving papers as a portion of Exhibit L, makes clear. Because of its extreme pertinence in describing the situation, that article is annexed hereto as Exhibit A. For other descriptions and photographs of the community as it existed prior to the depredations of the Defendants, see annexed Exhibits B and C.

Adjoining Plaintiff's terrace was an unusual high-rent apartment house which had won numerous architectural awards. Many better restaurants and boutiques were on this street. On the other hand, portions of the block contained older but nonetheless well-maintained buildings housing many long-term lower income residents. I lived in the area at that time and attest to all of this from my own personal knowledge.

¹Also known as 873-5 Third Avenue.

²A small portion of that roof garden is shown in the upper left hand photograph of the Sunday News article of August 29, 1971, annexed as Exhibit B.

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Unfortunately, the block where Mr. Rathborne resided was located in the East 50's which became of prime interest to assemblers and developers of megalithic structures during the building boom of the late 1960's. By 1969, this was one of the few blocks in the area which contained no skyscraper. Therefore, it became extremely tempting to the "Madison Defendants" who, despite their modesty in their moving papers, are in fact major developers and assemblers of properties¹. If we believe Mr. Glickman's affidavit, between 1969 and 1972, he undertook the enormous effort of assembling this entire block through hordes of subsidiary corporations², transferred properties continuously among these subsidiaries³, and entered into numerous contracts with Defendants Urban Relocation and Citadel Management for the relocation of tenants⁴ with no particular purpose in mind. Apparently Mr. Glickman has forgotten that in October, 1971, he believed he was acquiring the property for the building of luxury apartment houses and townhouses and that "bitter opposition" from most of the neighborhood would not stop his plans⁵.

Whether or not Mr. Glickman's 1971 statement or his current recollection is more accurate, between the time the Madison Defendants conceived of the

¹At the very least, these interests built The Galleria and Excelsior apartment houses on East 57 Street, two of the most significant residential structures built in mid-Manhattan in the past decade.

²Annexed hereto as Exhibit K is a list of those corporations and the dates when according to Mr. Glickman they acquired the various properties on the block.

³With regard to 200 East 53 Street alone, the following transfers at least have been made within the Madison interests according to the documents on file in the Hall of Records: On January 5, 1971, property acquired by Defendant WOAS; on July 18, 1972, property transferred to Defendant Siltan; on July 18, 1972, property transferred to Defendant Salbian; on October 16, 1973, property transferred to Defendant Madison; on April 16, 1975, property transferred to Defendant Siltan; on August 11, 1975, property transferred to Defendant Madison; on August 11, 1975, property transferred to Defendant Siltan.

⁴See annexed Exhibit J of one such example. Similar contracts were entered into with regard to all Madison-owned buildings on the block.

⁵New York Times, October 13, 1971, p.33, col.4.

DAVIS SUPPORTING AFFIDAVIT

assemblage and the time Plaintiff was finally forced to vacate in 1972, Mr. Glickman and his fellow investors managed to gain ownership of most of the property on the block. As part of what Mr. Glickman quite correctly describes as "traditional" means of assemblage -- although this "tradition" did not exist prior to the 1960's when the relocation industry, led by Defendants Urban and Citadel, was formed -- in order to drive tenants from their homes, huge ugly signs appeared indicating that the block was being vacated¹, buildings were abandoned and left to decay, becoming, as the Director of Odyssey House so aptly describes them in her letter annexed as Exhibit S, havens for derelicts and addicts; windows were tinned in a crypt-like manner; drug rehabilitation centers and their floating addict populations were moved to the block en masse; once lovely stores were either boarded up or turned into drug center thrift shops; fires "inexplicitly" broke out in abandoned buildings². In short, as the affidavits of Paul Brine, Betty Butterworth and Louis James, all longtime community residents, as well as annexed Exhibits B and C make clear, in a few years the block bounded by 52nd Street, Third Avenue, 53rd Street and Second Avenue turned from a fine urban environment into a nightmare. Annexed Exhibit C is a public announcement put out by the tenants' community organization which unsuccessfully attempted to stop this blight. The document eloquently describes the decay of the community once the Madison Group became predominant.

As yet, another part of the "traditional" means pursued by the assemblers, the Madison interests entered into agreements with Urban Relocation and Citadel Management for the "relocation" of tenants and "management" of

¹ These signs were more than twice as large as the moving affidavits describe them. See annexed Exhibit .

² As but one example, in a period of two weeks there were the following fires serious enough to report: January 26, 1971, at 225 East 52 Street; January 29, 1971, at 211 East 52 Street; February 11, 1971, at 207 East 52 Street.

DAVIS SUPPORTING AFFIDAVIT

properties, including the premises in which Plaintiff lived (see annexed Exhibit J)¹. The expertise of these co-defendants, as not merely the allegedly paranoid Plaintiff but also the Attorney General of New York State and Deputy Commissioner of Rent Control believe (see annexed Exhibits F and R), lies in driving people out of their homes. At the same time that Plaintiff was going through the greatest period of his suffering, the Housing and Development Administration, in response to the clamor of thousands of citizens who had been similarly tormented, conducted hearings into the tactics of these relocation companies. The transcripts and tapes of those hearings have been subpoenaed in conjunction with this motion. Even a brief examination of their contents makes clear that plaintiff's "paranoia" was shared by most of Manhattan's congressmen and assemblymen. Through the cumulative acts of these parties, by November 1972 the situation on the block had become so intolerable that Plaintiff could no longer physically or psychologically survive there, and so he had to vacate and abandon what he expected to be his home for his lifetime, and thousands of dollars of investments in permanent improvements². Plaintiff thereupon moved to Louisiana, not to establish diversity jurisdiction³, but because that was his birthplace and where many of his family interests were located. He has resided in Louisiana ever since.

But a most ironic coincidence, shortly after Plaintiff vacated, the

¹Why the Madison defendants would enter into a contract to relocate tenants at a \$2,000 stipend in a building in which they had no interest is beyond imagining but that is what Mr. Glickman would have the court believe.

²Admittedly, Plaintiff's situation with his immediate landlord was not the best, but it was conclusively determined in the action that the Madison defendants label "Rathborne I" that it was the general deterioration of the community caused by the within defendants, and not the particular acts of his landlord, which caused Plaintiff to move. At the very least, this is a matter which cannot be determined until trial. Moreover, as is discussed later in this affidavit and in the accompanying memorandum, while the vacating of the apartment was critical to "Rathborne I", a constructive eviction action, in the within matter it goes only to the measure of damages not the gravamen of the complaint. If the defendants are guilty of the acts specified, they would be liable to Plaintiff even if his damage did not include loss of the apartment.

³Plaintiff could have remained in New York and brought precisely this same lawsuit in the State courts.

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bottom dropped out of the New York City real estate market, and the block was allowed to moulder by the no-longer-interested assemblers. The Madison Defendants and their agents have thus succeeded in driving hundreds of families and small businesses, including Plaintiff, from the block, to be replaced by derelicts and rats.

The Significance of This Case

As the Defendants correctly point out, the process of destruction discussed above was far from unique to the block where Plaintiff lived. It was engaged in wherever developers wished to drive large numbers of tenants from their stores and homes. See the Attorney General's Affidavit annexed as Exhibit F. The Defendants correctly state that there are administrative procedures that can be followed to attain eviction certificates within the purview of the law (Moreland Affidavit, p. 24). However, they neglect to point out why these procedures are not used in practice. At least the following make them wasteful if not dangerous methods for potential developers:

1. The method is time-consuming, involving two levels of the Rent Commission, a Mandamus proceeding and an appeal, all available as of right to each tenant;
 2. The developer is bound to a specific plan, and, if he does not go through with it, is liable to the evicted tenant. For example, on the block in dispute, since the Madison Defendants never went through with their project, they would be liable to each tenant they caused to move through such proceedings;
 3. In any major assemblage, those rent-controlled tenants who may be evicted through certificates represent only a portion of those who must be removed. A harassment campaign works equally well against decontrolled, commercial, and professional tenants. Thus in practice the eviction
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DAVIS OPPOSING AFFIDAVIT

certificates procedure is followed only where a building housing solely rent-controlled tenants is involved;

4. After October 1971, as per annexed Exhibit E, the Rent Commission was not issuing eviction certificates for the intended Madison purposes.

All of these major developers and their cohorts tried to use technically "legal" means to achieve totally illegal and immoral ends. One excellent example is the tinning of windows. The statute which the Madison Defendants cite in support of tinning (Moreland Affidavit, p. 27) sets forth the laudatory principle that vacant buildings must either be guarded or have their windows sealed. This statute applies to all buildings in New York City. However, tinning never has been found necessary to comply with this statute except where developers are seeking to drive neighboring tenants from their homes. For example, on the Avenue of the Americas between 45th and 46th Streets stands a new skyscraper which, because of the exigencies of the rental market, is completely vacant. However, its landlord is not seeking to drive other tenants from the block. Not a single window in that building has been tinned. Likewise, no one who builds or remodels buildings and is seeking new tenants will tin windows. The Defendants could have had the buildings guarded, or they could have sealed windows by a wide variety of more attractive means. Tinning is simply the most hideous means permitted by the statute and, therefore, of greatest appeal to assemblers. As the New York Magazine article annexed as Exhibit A succinctly states:

"The effect on the tenants who remain is insidious, not unlike living next to a sealed crypt."

The huge, ungainly signs posted on numerous buildings by Urban Relocation announcing that the block was being vacated is yet another example of defacing property to the greatest extent permitted by law. Urban Relocation

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controls the majority of the "relocation" business in New York City¹. It certainly did not need these signs for advertising purposes. Their only purpose was to make clear to the remaining tenants on the block that it was about to be demolished and that they had better move. In fact, until they were ordered to do so by the court, well after the depredations on this street began, the signs intended to convey the impression that the demolition was pursuant to governmental authority and, moreover, were far larger than permitted by any reading of the law. Even when, under compulsion, the words "Not a government agency" were added to the signs, this did not make them any less ungainly nor the threat of destruction any less dire.

The drug rehabilitation centers are yet another example of a legal (and in this case, a superficially laudatory) undertaking for a very sinister end. There is nothing wrong with the drug rehabilitation, and certainly one cannot blame Odyssey House for occupying buildings they were offered rent free. However, the court should consider why the Defendants had no objection to drug programs occupying buildings they were otherwise so anxious to vacate. Was it great dedication which caused them to give Odyssey House the use of eight buildings on one block in a neighborhood which never had any significant drug problem? It is not at least as possible for the jury to agree with the Attorney General of New York State (see annexed Exhibit F); that the true objective of these Defendants was "to force tenants to vacate their housing accommodations by placing addict rehabilitation and treatment facilities in occupied residential structures with resulting disturbances that necessarily flow?...." Importing

¹ See the Affidavit of Seymour Shapiro sworn to March 29, 1973 in Urban Relocation and Citadel Management v. Levant, Supreme Court, N. Y. County, Index No. 7049/1973; "The partners have undertaken 75% in numbers of all of the relocation management work that has taken place in Manhattan for the past fifteen years....if ... activities were terminated, the entire demolition and construction industry would go with them."

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hordes of teenagers with neither social, economic, nor ethnic¹ connections to a community is certainly not a means of assuring its stability. The fact that an addict is enrolled in a drug rehabilitation program does not mean that he is cured of addiction or ever will be. In 1969, as a staff member of the Vera Institute of Justice, I had several discussions about the Odyssey House program with Dr. Densen-Gerber, its founder and director. She advised that its rate of success was below 20%. This is far better than the national average of 2% to 5% as reported in HUMAN BEHAVIOR, November 1975, p.51. Moreover, even those relatively few who have been cured of their addiction continue friendships and family relations with others who remain addicted and who come to visit. Further, the underlying anti-social attitudes instilled in most addicts from early childhood does not evaporate simply because addiction ceases. The behavior of the Odyssey inmates in showering objects upon Plaintiff's terrace and the strewing of garbage as described in Exhibit Mc, are but two examples of this.

The importance of this matter in establishing the rights of victimized tenants against depredations of developers cannot be overstated. As the feature article of the New York Times Magazine of , 1975, stated, the single most destructive force to the viability of New York City in the past 20 years has been the greed of people who have ruined entire communities for the sake of building unattractive, unnecessary mammoth projects for no purpose except private profit. The lives of countless thousands of tenants have been disturbed and often destroyed for no reason except that they happen to live in a community which caught the fancy of some such developer. The Affidavit of Daniel Joy of the Office of Rent Control of the Housing and Development Administration of

¹As one of the gratuitous offences against Plaintiff's character, the moving parties assert that he was prejudiced against blacks. Unlike the moving parties, I have known Plaintiff for many years and affirm that he has no such prejudice. In fact one of the principal witnesses on his behalf in "Rathborne I" was black. However, many people do hold such prejudices and developers anticipate their results when predominantly black populations are moved into a community that previously had no such population. Prejudice is not a healthy condition; neither is blockbusting.

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New York City makes gruesomely vivid what happens on a block where these developers take interest:

"The building now proceeds along the path towards rapid deterioration; public halls are no longer clean; rats and roaches begin to blossom everywhere; front door locks are mysteriously broken, allowing alcoholics and narcotic addicts and other undesirables to enter the building at will; vacated apartments are not cleaned and garbage is permitted to decay in its empty rooms; plumbing fixtures have been torn out of the vacated apartments, so as to prevent squatters from entering. This often causes water damage to apartments that are still occupied; boilers break down in the dead of winter and are not repaired for weeks and sometimes months at a time; there have been instances where the post office is advised that the building is vacant, thus forcing the tenants to go to the post office for their mail; hall lights burn out and are not replaced; and in some instances, the electricity is turned off."¹ (See annexed Exhibit R)

The thousands who have been subject to these developers' depredations have generally been too impoverished, terrified, or exhausted to even attempt to obtain a remedy or compensation for their sufferings. Various governmental agencies such as the Attorney General and the Housing and Development Administration have expressed concern about the plight of these people, but, perhaps understandably because of financial and jurisdictional problems, have been unable to obtain anything except token fines and consent decrees which the agencies are not sufficiently staffed to enforce. Fortunately, the within Plaintiff, because his particular circumstances caused him to depart from the New York area, leaving him without fear of reprisal, and because he has sufficient means, has been able to maintain this action. Unless this court not only finds that Plaintiff has a valid cause of action and compensates him for the very great loss he has suffered but also imposes punitive damages upon the Defendants in a manner that begins to equal the enormous profits these speculations have generated, there is no hope of arresting the continued destruction of our city by these depredators.

¹ In Plaintiff's case most of these acts were caused by the within Defendants but some by his immediate landlord. It is no wonder that he suspected conspiracy between all of them.

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The Unbelievable Glickman Position

Mr. Glickman attempts to argue that while he had some unspecified interest in the block, he had no particular interest in the building where Plaintiff resided. As is discussed below, intent to harm is irrelevant to a nuisance cause of action. However, as it is relevant to some other bases of liability, it is important that this claim be shown in its full absurdity.

The building where Plaintiff lived occupied the only subway corner on the block (the southeast corner) and was the single most important parcel in the assemblage. Why the Madison Group would have purchased the underlying fee ownership and manipulated an array of corporate title transfers concerning property in which they had no interest is beyond comprehension. There would be even less reason for Mr. Glickman to have entered into the agreement with Citadel and Urban to pay them a bonus for everyone removed from the very building where Plaintiff lived if he did not care about emptying the building. There certainly would have been no reason for him to compile annexed Exhibit L showing whether or not there would be any "possession problem" with regard to that building.

The very fact that both Mr. Glickman and the attorney for Urban-Citadel take the absurd position that, despite all this, the Defendants had no interest in Plaintiff's tenancy should be taken into consideration in testing the veracity of the remainder of their statements.

There was a long-term lease on the property held by an apparently unrelated party which the Madison Defendants never successfully negotiated to purchase although, according to testimony in "Rathborne I", they had offered over \$1,000,000. That lessee, Plaintiff's immediate landlord, admittedly did not have a good relationship with Plaintiff. The bulk of the Madison papers in support of its motion extensively detail the various unpleasant incidents

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that occurred between these persons.¹ These incidents were the substance of "Rathborne I" and, therefore, occupy almost all of "File I" through "File V" but they are totally irrelevant to the case at bar. Even had relations between Plaintiff and his landlord been perfect, he would have been entitled to recover in this case if he establishes that the various acts of the within Defendants constituted a nuisance or other tort which caused him damage.

The trial judge in "Rathborne I", whom defendants otherwise laud, found that the incidents between the parties in that action, unpleasant as they might have been, did not contribute to plaintiff's vacating his apartment. Rather, he found it was the deterioration of the block caused by the within defendants' depredations:

"There was an attempt by a developer to "assemble" (completely purchase) the block in which Garfinkel's building was located. The developer bought other buildings and then left them vacant. Drug rehabilitation centers moved into the block. Vandalism and street crimes increased; transients and addicts frequented the streets. Rathborne introduced no evidence to show that Garfinkel participated in the attempt to assemble the block or was responsible for the change in the character of the neighborhood. In my view, this change in the neighborhood and the dangers it posed to the residents caused Rathborne to move."²

Mr. Glickman further maintains (see p. 6 of his affidavit) that until he received plaintiff's letter of November 20, 1972, which "shocked" him, he never knew that there was the slightest objection by any tenant on the block to his assemblage. Apparently Mr. Glickman does not read New York Magazine, nor does he have any awareness of Housing and Development Administration hearings. Nor apparently did he have any awareness of the East 50's Association, a tenant's

¹It is conceivable that one reason Plaintiff's landlord undertook various acts of harassment was, either because he was told or had an elementary sense of the real estate market, he believed that if he could force Plaintiff (the only rent-controlled tenant in his building) to move, the value of the leasehold would increase substantially. Thus, while he may not have been in technical conspiracy with the developers, the fact of the proposed development may well have motivated the various acts which were the subject of "Rathborne I".

²The "Madison Defendants have annexed this opinion as part of their moving papers (Exhibit I). Therefore, its contents are binding upon them in this motion.

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group with scores of members which had formed precisely to combat the depredations of the Glickman assemblage. Nor, apparently, does he read his own mail: Annexed Exhibit M is a letter to the partnership which Mr. Glickman insists he controls, listing no less than nine complaints by tenants of various buildings on the block concerning signs which were installed on seven buildings on the block. Nor, apparently does he write his own mail: A letter in Exhibit G, purportedly signed by Mr. Glickman, shows a rather complete knowledge of complaints being made by the Attorney General about the assemblage. Annexed Exhibits B through D are copies of various newspaper articles, press releases, and other public statements detailing the occurrences on the block, which Mr. Glickman seems to have forgotten.

* * *

The Grounds of the Complaint

It would be incredible if the situation discussed above did not give rise to a legal cause of action. As a matter of fact, there are a variety of grounds upon which the complaint must be sustained. At least the following are applicable: (1) Nuisance (the first cause of action constituting private nuisance and second, public nuisance); (2) Statutory harassment; (3) Conspiracy; (4) Prima Facie Tort.

I. Nuisance

When parties commit acts, even if they are legal per se, they must be

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undertaken with an awareness of the harm they may reasonably be likely to cause in the neighborhood. If such acts are reasonably likely to, and do in fact cause injury to others, then the perpetrators, whether or not they intended the specific injury, are liable in nuisance.

Defendants argue that none of the acts committed by them were specifically intended to harm Plaintiff (whom they did not even know) and that all of them were committed on property other than where Plaintiff resided. This, however, is precisely what is required to sustain a nuisance cause of action.¹ Acts of depredation, whether they consist of damming a stream, erecting a spite fence, or allowing vacant buildings to fall to ruin, must be committed on property other than that occupied by the Plaintiff to establish a cause of action in nuisance. See the accompanying memorandum of law. If such acts are committed on the same property, the Plaintiff may have a cause of action for breach of contract, violation of lease or constructive eviction, but not for nuisance. This is a major reason why this case is distinct from the action defendants choose to label as "Rathborne I"². As Judge Solomon succinctly stated in the first sentence of his decision in that action, "This is an action for wrongful eviction." Such an action can lie only against a landlord: nuisance cannot.³

¹Glickman, Madison, and, upon information and belief, Salbian, or their totally controlled numerous corporations, were owners of neighboring property during the period in dispute and Citadel and Urban Relocation were the managing agents thereof. All of these defendants can therefore be held liable in nuisance. Defendants WOAS and Siltan were underlying fee owners during the period in dispute with interest as far as plaintiff knows in other premises. Therefore, they could not be held liable under this interpretation of the complaint. They can, however, be held liable as co-conspirators or on other theories discussed later in this affidavit. Defendant Salbian held the underlying title to the premises during a portion of the period and as such could not be held liable in nuisance. However, it also owned adjoining premises where nuisances are alleged to have been committed. Defendant Madison did not acquire title to the underlying premises until after the period in dispute. The chain of title is set forth in footnote 3 on page 2.

²As is discussed elsewhere in this affidavit, there is no similarity in "Rathborne I" and this action. However, since defendants have employed nomenclature, for purposes of convenience that prior distinct action will be so designated in this affidavit as well.

³For similar reasons the Rent Commission harassment complaint which later became the subject of a Mandamus proceeding is irrelevant to the case at bar since. Under Section 78(b) of the City Rent Regulations, the Commissioner is only authorized to investigate a situation where a tenant has vacated because of actions of the landlord or any person acting in his behalf.

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The tinning of windows, abandonment of buildings, movement of large numbers of drug centers into the block and the posting of ungainly signs as well as all those matters described by Commissioner Joy in annexed Exhibit R, could be reasonably expected by developers to cause the residents of that block discomfort and damage, or at least a jury could so conclude. Plaintiff contends that these acts were undertaken with that specific intent. However, whether such intent existed relates only to punitive damage insofar as nuisance is concerned.

II. Public Nuisance

As the accompanying memorandum explains, nuisance falls into two categories: private and public. The complaint alleges causes of action corresponding to these categories. Private nuisance exists when a person engages in actions, lawful or otherwise which cause damage to a neighbor. A public nuisance exists when a person engages in acts, lawful or otherwise which cause damage to a neighborhood or other community of persons. In neither case is intent to injure a prerequisite to a liability: all that need be shown is that it was reasonable for the acting party to believe that his acts might cause an injury, and that an injury did occur.

While a public nuisance damages all people in the community, such a claim may be brought only by one specially damaged thereby. For example, a person living several blocks from the 53rd Street site may have been disturbed by the appearance of the block whenever he passed by, but that would not give him grounds for a lawsuit. Plaintiff, however, is not in such a position: he specifically suffered very great special damage from the depredation to the community and, therefore, has a valid public nuisance claim.

III. Statutory Harassment

The Defendants seem to believe that harassment is the sole gravamen of Plaintiff's complaint. They should have been aware from the pleading which sets forth harassment as a separate matter (Allegation 10), that this was never Plaintiff's intent. It is, however, one of the bases of Plaintiff's claim.

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Harassment, per se, is not a separate tort and therefore is subsumed under the prima facie tort category discussed below. However, Section 61 of the City Rent Regulations makes it unlawful for any person, with an intent to cause any tenant to vacate housing accommodations, to engage in any course of conduct which interferes or disturbs the comfort, repose, peace or quiet of such tenant in his use of occupancy of housing accommodations.

The tests for applicability of this statute are quite different from the nuisance categories discussed above. (1) It is applicable only to rent-controlled tenants. Plaintiff indisputably was such a tenant, at least as to half of his apartment.¹ (2) Unlike nuisance, there must be proof of intent. Both the allegations and the complaint and all of the supporting papers now being submitted, show that there is, to say the least, a reasonable possibility of such intent being established at trial, which is all that is necessary to defeat a summary judgement motion. The Madison Defendants admittedly wished to develop the block and could not have done so as long as tenants were residing there. They would not have acquired the underlying title to Plaintiff's building had they no interest in including those premises in their development. Certainly they would not have entered into a contract with Citadel and Urban with regard to that building if they had no such interest. (3) Unlike nuisance, there is no requirement that the disturbance come from adjoining properties. Therefore, any of the defendants, including the holders of the underlying leasehold, may be held liable if the provisions of Section 61 have been violated.

As with nuisance, and unlike constructive eviction, there is no requirement that a tenant vacate the premise for liability to exist under Section 61. The intent of the harassing party does not have to be fulfilled in order for

¹In September of 1972 the Office of Rent Control issued an order declaring that the top floor of plaintiff's apartment was not subject to rent control. The protest from that order became moot when plaintiff moved out of the apartment and therefore no final determination as to its status has ever been reached. Whether or not the top floor was in fact a portion of plaintiff's rent-controlled apartment will be a matter of fact to be determined at trial.

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liability to arise. Thus, in this instance, as in all the other categories, the fact that Plaintiff was forced to vacate goes only to the extent of his damage, and not the bases of the complaint.

While the City Rent Regulations thus establish liability for persons interfering with the peace and quiet of tenants with the intent to cause them to vacate, they do not provide for any administrative procedure except where the harassing person is the tenant's landlord (Section 78 of the City Rent Regulations). Thus a person such as Plaintiff whose Section 61 rights are violated by persons other than his landlord has his sole remedy with the court.¹

IV. Conspiracy

While conspiracy is a separate category of tort, it is quite distinct from other areas in that its gravamen involves not only the act committed but also the number of persons involved: there must be at least two entities in order for a conspiracy to exist. A person cannot conspire with himself.

In this case, however, there is no question but that there are sufficient parties to establish a conspiracy. Even if Glickman establishes that all of the "Madison Defendants" are the same -- and this is very unlikely given the fact that Madison Associates has nine separate partners -- Urban and Citadel still are very distinct. If it is established that any or all of the Madison Defendants conspired with Urban and Citadel, that will be enough to establish the requisite number for a conspiracy. A conspiracy must also involve either the commission of a wrongful act, or of an act lawful in itself but for unlawful ends. The complaint and the within papers are replete with such claims. Committing a nuisance is unlawful, violating Section 61 of the Rent Control Regulations is unlawful; it is unlawful to try to drive tenants from their homes. If it is established that the parties conspired toward that end,

¹The accompanying memorandum of law discusses situations where the New York State courts have found the underlying fee owner to fall within the purview of the term "landlord". However, they are inapplicable here since none of the acts claimed of were committed on the premises. The fact that some of the defendants had some relationship to the underlying fee owner is an irrelevant coincidence.

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whether or not the particular means they employed were illegal is inconsequential.

Unlike nuisance, however, conspiracy involves intent. Since conspiracies are inherently secret, that intent may be shown through circumstantial evidence. The annexed exhibits demonstrate that there certainly is an amplitude of such evidence, and more may be obtained through the deposition of Madison Associates.

If a conspiracy is established, then any party thereto is liable for any act committed in furtherance of the conspiracy whether or not he participated in that particular act: This distinguishes conspiracy from any of the other causes of action where parties may be held liable only for acts committed by them or under their direction. In this particular case, the distinction is not crucial as it is incredible that Urban and Citadel could have committed any of the acts of depredation without Madison's consent and approval. Where conspiracy may be relevant is in holding Defendants WOAS and Siltan liable: solely as underlying fee owners, during the period in dispute, they could not be held liable in nuisance. However, if they are found to be co-conspirators, then they can be held liable for the nuisances that occurred on adjoining premises.

V. Prima Facie Tort

In the State of New York the courts have adopted the common sense rule that no person may commit an intentional wrong without there being redress therefor. If for any reason such a wrong is committed which cannot be subsumed under any of the other categories of tort, a cause of action in prima facie tort will be allowed. It is, of course, Plaintiff's position that he has valid causes of action in nuisance, statutory harassment, and conspiracy. If any of those positions are upheld, then the issue of prima facie tort does not arise. However, in the event that this court finds none of the other categories applicable, then Plaintiff's cause of action should be sustained within prima facie tort. It is his contention that the acts of defendants discussed in length above were committed with intent to harm him as a tenant on the block, and that since he was so harmed, he should be allowed

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to pursue his claim. Whether or not defendants specifically directed their wrath toward Plaintiff is immaterial: if one throws a bomb into a crowd he is culpable for any injury occurring to any person in that crowd. Likewise, if one desecrates a block with the intent of driving the remaining tenants from that block he is liable for any injury caused to any such tenants.

Defendants seek to make the argument that any wrong whatsoever committed against a rent-controlled tenant is compensable only through administrative proceedings. That, however, is not the case: the only matters which must be determined via rent agency proceedings are issues relevant to rent control. Because a person happens to live in a rent-controlled apartment does not mean that he has to complain to the Housing and Development Administration every time he is assaulted, robbed or otherwise suffers injury irrelevant to rent control. The Rent Control statute does not presume to deal with issues between tenants and their neighbors or strangers: it is concerned only with landlord-tenant matters. Even in "Rathborne I" which was a landlord-tenant dispute, neither this court nor the Second Circuit found that the Rent Commission had exclusive initial jurisdiction. Had it so found it either would have adopted the primary jurisdiction argument or would have dismissed the action for failure to exhaust administrative remedies. It did neither, but rather decided the case on its merits. If the administrative agency does not have exclusive initial jurisdiction in constructive eviction actions by rent-controlled tenants, it certainly has no such jurisdiction in nuisance complaints against neighboring property owners and their agents.¹ Moreover, even if the court were to adopt the Defendants' theory that any injury a rent-controlled tenant suffers must be initially reviewed by an administrative agency, that still would not be dispositive with this action, as there is an outstanding, albeit non-final, order

declaring half of Plaintiff's apartment decontrolled, and that order is at least

¹If the court nonetheless accepts Defendants argument that the Rent Commission has jurisdiction over them for the acts which are the gravamen of this complaint, then it should stay this proceeding pending determination of the appeal in the Mandamus proceeding for the primary jurisdiction reasons presented to the "Rathborne I" court and annexed to the movants' papers. Of course, it is Plaintiff's position that that argument does not apply to a case where the landlord is not involved.

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presumptively valid.

Punitive Damages

Plaintiff has requested that very considerable exemplary damages be assessed against these defendants in addition to the actual damages he has sustained. Otherwise this case will have no effect upon the depredators of Manhattan. There have been far too many blocks that have been redeveloped through tactics analogous to those employed on the street in question. Wherever these schemes succeeded, developers' profits were in the scores of millions of dollars. That same profit would have been made on this block but for the exigencies of the real estate market. Unless damages are awarded commensurate with the profits these "developers" stand to make, this action will not serve as a brake upon their depredations.

In order to establish punitive damages, one must show intent to injure. If statutory, conspiracy or prima facie tort liability is shown, such intent will necessarily have been established. However, nuisance liability may be established without proof of intent. If the court sustains this complaint on that basis then the allegation of intent becomes relevant for punitive damages purposes only.

The Motion of Urban and Citadel to Dismiss the Complaint

The motion of Urban and Citadel to dismiss the complaint basically reiterates the points made by the Madison Associates. Therefore, all of the above discussion is relevant to both motions.

Unlike the Madison motion, however, the only affidavit in support is submitted by the attorney for Citadel and Urban who does not even allege personal knowledge of any of the facts therein. Therefore, it must be completely disregarded as not complying with Rule 56(e) which requires supporting affidavits to be made on personal knowledge.

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However, the Urban-Citadel motion should not be denied only on this technicality. Urban and Citadel were far from merely innocent hirelings of the Madison Defendants. They are the largest "relocation" agencies in New York City and invented and effectuated most of the procedures such as the tinning of windows and posting of signs¹ which caused this block to so deteriorate. Because of these activities, they have been the subject of a number of Rent Commission and Attorney General investigations and actions. The Urban-Citadel attorney follows the same alibi as Mr. Glickman, claiming that his clients did not have the slightest interest in causing Plaintiff to leave his apartment even though, as per annexed Exhibit J, it entered into a contract specifically concerning Plaintiff's building in which it was to receive a payment if it induced any tenant therein to relocate. Perhaps the Defendants can convince the jury that a major developer and the major relocation company entered into such a contract by some sort of accident, but that certainly should not be accepted by the court upon a summary judgement motion. The affidavit of the Assistant Attorney General of New York State sworn to June 29, 1972, when the worst of the depredations on the block were occurring, is annexed hereto in Exhibit F. It makes extremely clear the type of action engaged in by this relocation group, and why they should remain parties to this action. Annexed to Exhibit F is a news release by the Attorney General shortly after Plaintiff was forced to move, announcing that he had obtained a judgement restraining Urban Relocation from engaging in acts of tenant harassment. Many of the buildings specified in that news release were on Plaintiff's block.

¹As defendants point out, Mr. Rathborne's testimony in "Rathborne I" indicated that these were the only activities of which he personally knew were engaged in by Urban and Citadel. However, as a number of the annexed exhibits make clear, other persons know of many other activities. Plaintiff is not limited to his own testimony at trial. Annexed to Exhibit M is a letter from a tenant living around the corner from Plaintiff detailing a few of the Urban-Citadel depredations apart from those personally known to Plaintiff.

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All of this makes clear that Urban-Citadel¹ were as much the prime movers in the incidents causing Plaintiff to move as were the Madison Defendants and, therefore, the causes of action against them should be sustained. Urban and Citadel are as liable as any of the Madison Defendants under any of the tort theories discussed above: with regard to nuisance, Citadel was the managing agent of the adjoining premises and Urban committed many of the acts which Plaintiff claims constituted the nuisance. With regard to statutory harassment, these defendants acted with intent to cause Plaintiff and the other tenants on the block to vacate their homes: that is the only reason these companies exist. As for prima facie tort, their acts were intended to and did cause harm to Plaintiff. There is no question that these defendants entered into agreements with the Madison Defendants. At best, these agreements were toward unlawful ends and, therefore, conspiracy liability also exists in their regard. If anything, Urban and Citadel were the more active of the depredators: They conceived of and performed the tinning of windows and posting of signs; they were the so-called managers of the deteriorating and abandoned properties; it was their specific task to try and get the remaining tenants out. In neither law nor reason should the complaint against them be dismissed.

Statute of Limitations

One portion of defendants' hydraheaded motions seeks to dismiss the complaint on the basis of statute of limitations. As is shown in greater detail in the accompanying memorandum of law, under whatever theory Plaintiff's complaint be sustained, the statute of limitations has not run.

- 1) Nuisance - Whether or not a three- or six-year statute is applicable to nuisance in New York State, this action is not barred. Under the law of

¹Technically, Citadel is in the "management" business and Urban is in the "relocation" business. However, they undisputedly become involved only at the behest of developers and perform their functions together. They are owned and operated by the same people. There is no attempt in the moving papers to distinguish between them, which is only congruent with their actual operations.

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nuisance, on each day that a wrongful condition continues, a new tort is deemed to have been committed. See the accompanying memorandum of law.

As far as Plaintiff is concerned these wrongs continued until November 20, 1972 when he was forced to vacate.¹ As this action was commenced in May of 1975, even the more restrictive interpretation of the statute would not bar this proceeding.

- (2) Statutory Harassment - This also is subject to the three year statute under Section 214(2) of the New York State Civil Practice Law and Rules. Therefore, any harassment falling within the purview of that section occurring after May of 1972 would be properly raised herein. Some of the wrongful acts, such as tinning of windows, may have begun prior to May of 1972, but they undisputedly continued and were exacerbated during the period within the statute. Indeed, even without the aggravation of the condition, if the wrong continued to occur within the statutory period, the claim would not be barred; the tinning of windows harassed Plaintiff at least as much in June of 1972 as it did in March of 1972. This is a very different situation from a wrong that occurs at a particular point in time, such as an automobile accident.
- (3) Conspiracy - The law is somewhat different here, because there is a marked time from which the statute runs, to wit, the commission of an overt act in furtherance of the conspiracy. However, as there is no specific statute of limitations concerning conspiracy, the general six year statute is applicable. There is no claim that the Defendants undertook any action intending to drive Plaintiff or other residents of the block from their home prior to May of 1969, and therefore no statute of limitations problem arises in this category.

¹While involuntary vacancy is not necessary in a nuisance claim (unlike constructive eviction) it does mark the period when the statute of limitations began to run in this action: after that date, while the nuisance may have continued, Plaintiff was not specially damaged thereby.

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- (4) Prima Facie Tort - New York State has no particular statute of limitations for this category of wrong. Therefore, it would fall within the general six year limitation period and could not conceivably have run at the time of commencement of this action. The Madison Defendants did not begin acquiring property until 1969 and the tort did not begin until some time thereafter when Defendants had acquired sufficient property and undertaken sufficient depredations to the block that their actions harassed and otherwise caused injury to the Plaintiff. Even were the three year statute held applicable, it still would not have run because as in the prior cases set forth above, this tort was continuous.

Laches

There also seems to be some type of laches defense asserted, although it is difficult to comprehend why as such a defense lies only in equity. The gravamen of this argument seems to be that because Plaintiff suffered his injuries for so long before moving, he is therefore barred from recovering for those injuries. This argument appears to have been adopted by Judge Solomon in "Rathborne I" with regard to constructive eviction. There is some logic the position that if a wrong is committed on one date and does not cause a person to move until months later, he cannot claim that that act caused his eviction. In "Rathborne I", all of the acts -- the axing of the door, the turning off of the electricity, the threats in court -- occurred at specific points in time. That is not the situation in the case at bar which involves continuing wrongs. Moreover, unlike "Rathborne I", the vacancy of Plaintiff is not germane to any cause of action: even if Plaintiff had not moved, he still could have asserted claims for nuisance, harassment, prima facie tort, and/or conspiracy.

In any event, it is only logical that people who have invested thousands of dollars in developing environments in which they hope to live for

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their lifetimes will not abandon these environments until all other avenues of recourse have proven to be without avail. Many of the papers submitted by movants demonstrate the efforts Plaintiff made to protect his home: he complained to the Rent Commission; he attempted to reach accommodation with Mr. Glickman; he sought psychiatric help; he sought assistance from the Attorney General. Only when all of these efforts failed was Plaintiff left with no alternative but to move.

The complaint sets forth two causes of action. Their principal thrust is the categories of private and public nuisance respectively. However, they also may be sustained under any of the other theories discussed earlier in this affidavit and in the accompanying memorandum. All of the allegations in the complaint are necessary either to establish the causes of action, the involvement of the Defendants in the wrongs or the damages claimed. If for any reason the court deems that these allegations do not fully comply with what it believes to be proper bases for causes of action within the described categories, then, in accordance with the liberality of Rule 15 of the Federal Rules of Civil Procedure, it should allow Plaintiff to amend its complaint to set forth allegations in what it deems proper form rather than deny recovery for the very serious injuries because of some such technicality.

The defendants admit most of the acts which Plaintiff contends give rise to his complaint. However, they defend against liability by claiming that these acts fell within the technical purview of the law. However, even if such compliance is proven (and that is a matter to be determined at trial), Plaintiff's claim must be sustained if the jury finds either that the acts constituted a nuisance, in which case compliance with the law is irrelevant, or that they occurred towards the illegal end of causing Plaintiff and others to vacate their homes. If the jury does find such an intent, they could and should assess punitive damages.

However these causes be construed, the statutes of limitations defense must fall and the motions to dismiss on that basis be denied. Certainly the motion of Madison Associates to have the complaint against it dismissed when it has both appeared and been served with process must be denied.

4-16-68

DAVIS OPPOSING AFFIDAVIT

The deposition of Madison Associates which has never been taken in any action should be set at a time and place to be determined by the court. A stipulation to which it was not a party certainly can have no effect on this. The portion of the Urban-Citedel motion seeking to stay all depositions must be denied as premature. At best, it can only be granted with regard to parties and matters which were relevant to "Rathborne I".

The Defendants attempt to justify their acts on this and other blocks in New York City by claiming that destruction of tenants' homes and lives is a necessary consequence of the development of our city. Leaving aside for a moment the fact that the Defendants never developed the block, there is no reason in law or morality why compensation for the economic and the psychological loss suffered by tenants on such blocks should not be considered a cost of development much as is the purchase of property, hiring of relocation companies and formation of a myriad of subsidiary corporations.

The personal and financial agonies which Plaintiff suffered because of the acts of Defendants in destroying his community is basis enough to sustain this complaint. However, a decision of dismissal would have implications far beyond the serious loss to Plaintiff: It would mean that tenants must suffer the destruction of their living environments without any hope of attaining just compensation therefor. Only by sustaining this complaint and allowing the matter to be determined by a jury will developers know that they cannot destroy the lives and homes of persons who happen to be in their path without suffering the just consequences thereof.

All that need be shown to defeat a summary judgement motion is that if the facts alleged are proven at trial, a jury could return a verdict for the Plaintiff. For all of the reasons set forth above and in the accompanying memorandum and in the exhibits annexed hereto, it is submitted that this test has far more than been met. For all of these reasons, the motions of the defendants should be denied in their totality.

A-166

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRESCOTT RATHBORNE,

Plaintiff,

-against-

75 Civ. 2392 (CLB)

CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., EDWIN J. GLICKMAN,
SALBIAN REALTY CO, INC., SILTAN DEVELOPMENT
CORP., WOAS PROPERTIES CORP., and MADISON
ASSOCIATES,

AFFIDAVIT

Defendants.

State of New York)
County of New York) ss:

BETTY BUTTERWORTH, being duly sworn, deposes and says:

I reside at 246 East 53rd Street, Manhattan, and have lived there since 1968. I make this affidavit to attest to the destruction which has occurred on our block since Mr. Glickman and his cohorts began acquiring property here in 1969.

When I first moved here, East 53rd Street between Second and Third Avenues was a lovely street containing fine restaurants and brownstones as well as some very well-kept lower income buildings in which a number of older people on fixed incomes resided. All of this changed beginning in 1969 or 1970 when the Glickman interests decided to drive the tenants on the street out of their homes so that they could build what even they finally came to realize was a totally unnecessary office building. Within a year or two, what once was a lovely street became a nightmare: buildings were boarded up, windows were tinned, huge signs were posted making clear that the block was being vacated, vacant apartments were not re-rented except to drunks and derelicts and a horde of Odyssey House drug centers were moved on to the block.

BUTTERWORTH OPPOSING AFFIDAVIT

I personally am an active supporter of Odyssey House and its efforts at drug rehabilitation. Such pious motives should not, however, be ascribed to Mr. Glickman who saw the needs of Odyssey House as a way of terrifying the remaining tenants. Bringing these Odyssey Houses here meant populating the block with huge numbers of people who neither had nor were interested in building ties in the community. Moreover, granted the fact that many (although never all) of them were genuinely trying to cure their drug addictions, the same could not be said for their friends and families who also flocked to the block to be near them. Drugs are now sold openly all along the block, and it has become a center of male prostitution. Needless to say, all of this made life on this block very unpleasant for the remaining tenants which is precisely what Mr. Glickman and his cohorts wanted.

The irony of all this is that after Mr. Glickman, his "Madison" group, and the Citadel & Urban Relocation people whose careers are dedicated to driving people out of their homes,¹ had succeeded in wrecking the block and driving most of the tenants out, they lost all interest in constructing the building which was the purported goal of their efforts. Right now they are in the process of trying to restore the block to the condition it was in before they commenced their destructive practices. Of course, this is impossible: the good stores have gone, most of the old tenants have left, and the drug pushers and male prostitutes will not leave just because Mr. Glickman changed his mind.

I do not know Mr. Rathborne, but I often passed the building where he lived and noticed his beautiful terrace. I sympathize with the suffering he went through as he saw his home and neighborhood destroyed, and applaud his courage in trying to bring these depredators of city life to heel.

Sworn to before me this 17 day of June, 1976

BENJAMIN WEISS
NOTARY PUBLIC, State of New York
Exp. 4-1-1982
Qualified in Queens County
Commission Expires March 30, 1977

BETTY BUTTERWORTH

A-168

Benjamin Weiss

NOTARY PUBLIC, State of New York
No. 414-12437
Qualified in Queens County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRESCOTT RATHBORNE,

Plaintiff,

-against-

CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., EDWIN J. GLICKMAN,
SALBIAN REALTY CO., INC., SILTAN
DEVELOPMENT CORP., WOAS PROPERTIES CORP.,
and MADISON ASSOCIATES,

Defendants.

State of New York)
County of New York) ss:

REPAUL BRINE, being duly sworn, deposes and says: I am
a resident of the City, County and State of New York. For a number
of years until after 1972, I resided at 201 East 53rd Street in
Manhattan.

Until late 1969, the block opposite mine where Mr. Rathborne
lived was a lovely street with fine stores and restaurants and at
least one major apartment house that had one a number of architectural
awards. All of this rapidly changed when the Glickman interests
began assembling that block and undertook a multitude of interests to
persuade or force the tenants on the block to move. The great
majority of the fine stores and restaurants moved, to be replaced
either by ugly boarded-up fronts or sloppy "boutiques" run by Odyssey
House. Tenants were forced to move out of perfectly good buildings
(the award building was not even 5 years old at the time) which then
either were boarded up or filled with a population having no interest
in the community and there only for the alleged purpose of "drug
treatment". Huge signs were posted by Urban Relocation which served
no purpose except to make it clear that the block was rapidly becoming

BRINE OPPOSING AFFIDAVIT

uninhabitable. Mysterious fires broke out in the stores or apartments of recalcitrant tenants. The block became a hangout for drug pushers and male prostitutes, and the abandoned buildings became shelters for alcoholics and derelicts. In short, the assemblers intentionally and willfully drove the block to ruin.

Of course, the destruction of the block did not only affect the remaining tenants on the block, although they were the ones principally affected: the entire neighborhood was blighted by this malicious ruination of the street: there was no way to keep drug addicts, drunks or derelicts on only the south side of 53rd Street. While I did not experience the direct threats suffered by those living on the block these developers were trying to assemble, its deterioration substantially affected my own living conditions.

I was able to see the Rathborne apartment and terrace from my apartment, and I verify that it was one of the most exquisite homes in the community. Mr. Rathborne had obviously spent a large sum of money and years of effort in developing a fine duplex apartment and perhaps the finest terrace garden I have ever seen.

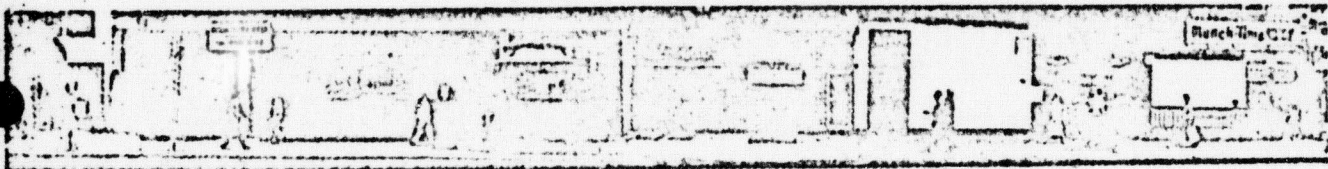
Mr. Rathborne is only one of a large number of people who have had their homes and lives destroyed by these rapacious developers. Unfortunately, many of the other people who were tragically injured are too terrified to take action against these large interests, have lost hope in any governmental agency doing anything to prevent the destruction of their communities, or cannot afford legal services to bring the necessary proceedings. I hope that the court will use this matter as an example to establish to developers that they cannot destroy communities and lives without repercussion. The block where Mr. Rathborne lived is destroyed beyond redemption, but perhaps such a finding will save other threatened communities.

Sworn to before me this 12 day of July, 1976

to the undersigned
MARY PHILLIPS, State of New York
in 1964/70 Qual. in New York County
form Comm. March 30, 1975

Paul Brine
PAUL BRINE

A-170



East of Third on 53rd Street: In the backyard, a child plays the recorder behind a rose bush.

Another Wrecking Ball Heads Toward East 53rd Street

By Daniele Deverin

"... My block is—was?—New York at its diverse best, but I seem to be standing in the way of someone else's idea of progress ..."

One beautiful morning in September, 1970, some neighbors of mine were evicted from their home, an apartment just across the hall from mine at 226 East 53rd Street. I was working at home on a report. Around 10 a.m., there was a commotion on the landing. A lot of noise and shuffling. Impossible to concentrate. I looked through the peephole in my door. A couple of burly men were blocking my view. Were they movers?

A few months before, all the tenants in our building had received formal notice that the building was going to come down and that we would have to move. By September, we were all a little unnerved, but still holding on. As far as I could tell, nearly everyone at 226 had decided to resist giving up our homes. Had my neighbors, a couple in their forties, decided to break ranks and leave? No, I decided. They had lived in their apartment for eighteen years. Koula Siappas, a vivacious and talkative dressmaker, would not have kept quiet about it.

Men were carrying furniture downstairs. Then I heard Mr. Siappas' voice: "Please don't. Please wait. My wife will be back in a few minutes." A frightened, pathetic voice. "For the love of God, what do you want, money? I'll give you money. Please!"

I was afraid to walk across the landing. Practically everyone in the building was at work. The old man next door was deaf. I tried calling the young lawyers who live downstairs. No answer. I called the Legal Aid Society: "An emergency. Can I have legal advice? People are being evicted. Tell me what to do." I knew they had to be stopped before the apartment was empty. "You have to come down to the office," said the voice at Legal Aid.

I decided to walk across to my neighbor's apartment. I heard Mrs. Siappas, making her way up the stairs, screaming: "What do you think you are doing? Put all these things back. I'm going to sue you for a million dollars." The Siappas' backroom seemed full of people when I got there—an older woman (a city marshal, I later found out), a stocky middle-aged man (a lawyer for the building's management, someone told me), a young policeman.

"You can't do that to me! I have paid my rent," Mrs. Siappas said, waving her hands for emphasis.

"No, you haven't," said the older woman.

Mr. Siappas, pale, said quietly: "And this is America. In 1970!"

"Can't I do anything? Do you want a lawyer?" I asked.

"Yes, do something, please. Find a

lawyer," Mr. Siappas answered.

I ran downstairs. A cab. All the way to Legal Aid on West 17th Street the traffic was terrible. I was shaking. The ruthlessness of it. The agony in Mr. Siappas' voice. Would it be too late?

Legal Aid. Forms to be filled. I didn't know their income. "But they are being evicted," I said. "Can't someone tell me what they can do?"

"Tell them to come down immediately," said a secretary.

I called my neighbor's apartment and asked for Mr. Siappas. A man's voice answered: "He is not here." What? Was the apartment already empty? Ten seconds later, Mr. Siappas was on the phone and I explained the situation. "That's all right," he said. "We're getting a lawyer. Thank you very much."

The next day I saw on the Siappas' door a notice in English and Spanish stating that the property taken from these premises would be found at a Department of Sanitation office.

The Siappases, I discovered, were staying at a nearby hotel. I had to go to Chicago on business, so I asked friends to stay in my apartment. Whose turn was next? On returning, I heard that Mrs. Siappas had dropped by. I "had been so nice to them" that she wanted to invite me to her husband's wake. He had died suddenly a few days after

"... Some tenants panic. Others are 'afraid of trouble,' need money, have no roots, or are simply young and uncaring..."

the eviction, and she had been called to identify his body at the morgue.

During the following months, Mrs. Siappas came to our building a few times to see her friends. She had flown to Greece to have her husband buried in their native land, and back to New York to try and repossess her apartment. Last spring, after many postponements, the court declared the eviction invalid. This decision is being appealed by the landlord. Mrs. Siappas, too shaken to endure the law's delay has since returned to Greece.

I have lived in New York City for many years and I have heard my share of stories about harassment of tenants standing in the way of someone else's idea of progress. There was, for example, Ann B., a friend who lived with her husband and teen-age daughter around Third Avenue and 15th Street. They had a floor-through apartment with a beautiful terrace. Several years ago the building was purchased to be destroyed and rebuilt. One day, a "distinguished" lawyer dropped in. "You have a lovely daughter," he said. "You wouldn't want anything to happen to her, would you? We can bring in Negroes, Puerto Ricans, people of very low type." My friend was enraged. "You don't think I'm going to fall for that type of blackmail, do you?" she said. "Oh, please, don't be upset. This isn't a threat. I only mention it because I wouldn't want anything to happen to that beautiful daughter of yours." My friend and her family gave up their apartment. Two years after the building was sold, it came down.

And I remember Lori S., who lived with her husband and three-year-old daughter in Jackson Heights. Not long after developers bought a number of houses around 90th and 34th, two men came to see her. "I don't want to frighten you, but after all, accidents do happen," one of them told Lori. "I wouldn't want anything to happen to your little girl." Lori was furious. "What do you mean?" She remembered that one of the men became embarrassed. "This isn't a threat," he said. "Don't take it that way." Lori's husband, a sweet and kindly man, found the story hard to believe. Lori, a Jew who had grown up in hiding in Europe, was more wary. They moved.

And now I feared that it was my turn. Apparently, my immediate neighbors and I were standing in the way of progress.

The square block bounded by 52nd

and 53rd Streets and Second and Third Avenues is—was?—the city at its diverse best: large and small apartment houses (some rent-controlled, some not), many brownstones and trees, antique stores and *dernier cri* boutiques, agreeable restaurants (the San Marino, Maria Cin Cin, Le Pont Neuf, Le Madrigal) and a delicatessen that never closes, and a store full of artificial flowers that spill all over the sidewalk so that the street looks like a set for *An American in Paris*.

In the morning, I say hello to everybody: the supers sweeping in front of their buildings, the tall smiling man who waters the artificial flowers, the neighbors. My apartment is darker in the summer than in the winter because the backyard is full of trees. It is also full of birds. The brownstone across the yard even had a greenhouse (which was dismantled last spring after the owner moved). Sometimes, I hear a child playing a recorder behind a rose bush.

How long we may mark the seasons in our backyard is now a question. Our building—a half-century old, six-story walkup with sixteen apartments—was sold in December, 1969. The new owner, a dishearteningly faceless entity called "H-M 226 Corp.," put the building in the hands of an outfit called Citadel Management Company. Over the year-end holiday period, we had no heat and no hot water for over a week. Citadel Management returned January rent-checks to a number of tenants for a variety of reasons—the check was late, the stamp had fallen off the envelope, the lease was not in the name of the payer, the December rent had not yet been paid. That winter, the boiler kept breaking down, particularly over the weekends. None of the tenants could figure out what was happening. I had never heard a word of complaint against our previous landlord. In the past year, mice made their debut. The front-door lock remained broken several weeks until a tenant finally decided to repair it himself. One freezing Saturday night, the lights went off and police had to be called to break into a locked basement door to track down the trouble.

In April, 1970, we received a letter from another outfit, the Urban Relocation Corp. Our building was to be torn down, it said, and they had been entrusted with helping us to relocate. The name of the firm and the tone of the letter had an official, intimidating tone. But Urban Relocation turned out to be

a private company that shares office quarters (Room 614, 205 East 42nd Street) with Citadel Management, the new landlord's managing agent. There is a phrase in football, I'm told—"double-teaming." It describes two men ganging up on one man to take him out of the play. Citadel Management/Urban Relocation, I began to think, is the way one double-teams tenants in the New York real-estate game.

Immediately after that relocation notice, a huge sign appeared on the wall of our building: "Buildings vacated by Urban Relocation." At present, nine such signs—each 4 by 8 feet—brand buildings around the block.

Next, we lost our superintendent. He had worked at 226 for about fifteen years. Citadel/Urban suddenly decided he was not doing his job properly. A dignified and stubborn little West Indian, about 60 years old, he considered this building *his* building, we were *his* tenants. Mr. Burgess lived in the basement, together with his wife, the boiler, the fuse boxes, and a recently acquired German shepherd. With him there we felt safe. All the tenants signed a petition saying that we wanted him to stay. He's gone now. A new superintendent has moved into the Siappas' old apartment.

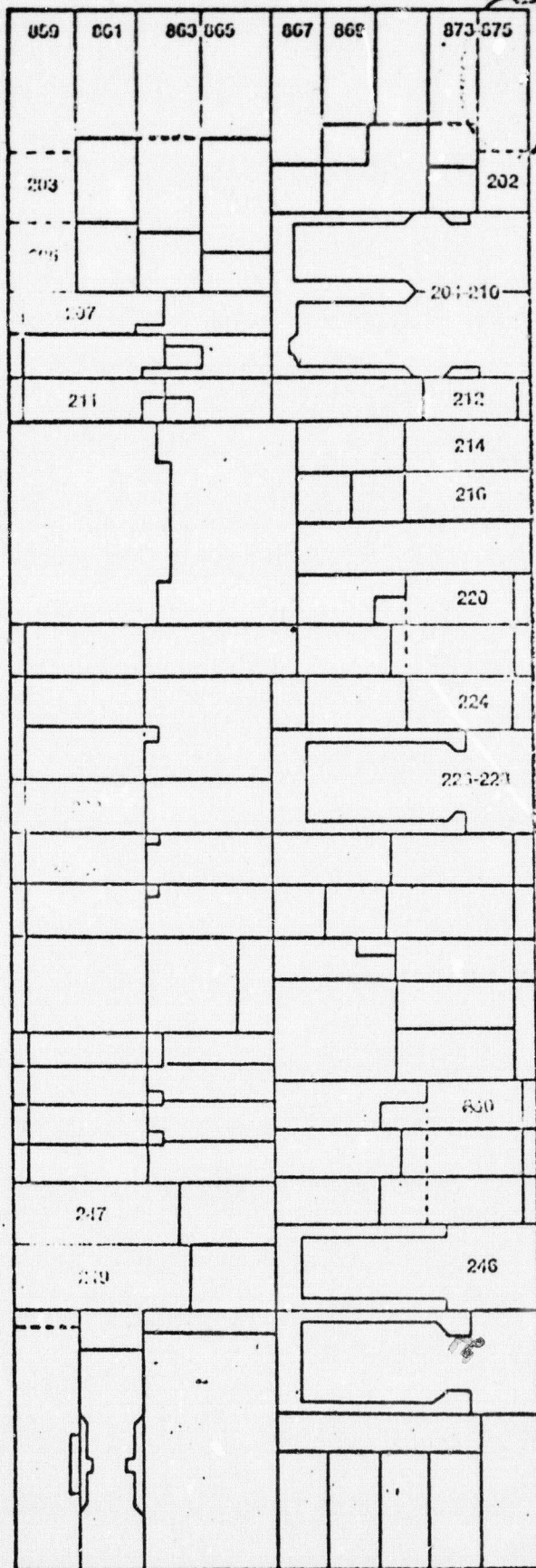
Two commercial tenants occupied the rest of the basement. Their leases ran out. They applied for new ones. No way. The craftsman who repaired antique furniture had been here many years. He suddenly was informed that his shop was a fire hazard. Now he's gone. Next, the ceramics studio. The tenants' lawyer obtained a six-month delay until August. In the middle of April, their studio was burglarized for the first time. They left in May.

As apartments were vacated, doors and windows could be nailed up with shiny sheet metal. The procedure is called "tinning." The effect on the tenants who remain is insidious, not unlike living next to a sealed crypt.

In the war of nerves against tenants, part of the strategy consists in identifying a "key" apartment—a focus for resistance—and emptying it at any cost. Two young lawyers living on the first floor in the back felt protective toward us. They had helped many of the tenants with personal legal counsel, as friends, and had also found an attorney to represent the tenants' cause. We all felt they would stay forever and help us. Suddenly last June, they left. Urban Relocation, it became known, had offered them a great place, a com-

THIRD AVENUE

NEW YORK MAGAZINE ARTICLE



SECOND AVENUE

A-173

bined office and residence with air-conditioning, sunken spaces for water beds, the works. Now their tinned door stares at us at the end of the first floor hallway.

Since the battle to resist relocation started, tenants have come to know one another a lot better. We want to stick together and keep our homes. But Citadel/Urban uses shrewd tactics. Divide and conquer. Not a new idea. "We just found you the best possible place. Don't talk to anyone about it. Everybody would want it." Thus, a second apartment has been vacated. Its middle-aged tenants had been relocated in 226 a few years ago when their building on 54th and Lexington came down. The husband worked in Connecticut. His wife wanted to stay in town. They hesitated and finally decided to move to Connecticut. At least, that's what they had told their neighbors. It was sad to learn that they had actually moved to East 63rd Street.

One way to keep one's sanity, and one's apartment, is to hire a good lawyer. Being thoroughly acquainted with one's rights is also indispensable. We are fortunate in our neighborhood to have the East Fifties Association. The sixteen blocks it serves have some 12,000 residents. The association was founded ten years ago to keep the neighborhood beautiful, but in the last year it has become increasingly concerned with survival. A walk around these blocks shows what is happening to one of the last areas in town that still has charm and, if not much amenity, at least a humane scale and a civil atmosphere. Count the tinned windows.

At 237 East 52nd Street is the national headquarters of U.S.O. Every Tuesday night the U.S.O. lets us run an Emergency Information Center there. Tenants and homeowners come for advice and support. By such means, and because we have a strong sense of togetherness, eighteen months after the "demolition" letter, thirteen of our sixteen apartments are still occupied.

The resistance effort is not doing that well everywhere else on the block. When they heard that their building was coming down, some people panicked immediately and grabbed at Urban Relocation's first offer. Others were "afraid of trouble," needed money, had

Block Association

Parcel by parcel, the square block of New York City shown at left has been changing its ownership and its character over the past few years. By all the signs—"tinned" windows where tenants have left, deteriorating services for tenants trying to hang on—the block is being "assembled" for a major real-estate venture. The properties shown in color are all now owned or controlled by one man, Edwin Glickman.

"... It's impossible not to wonder about the philanthropic motives behind landlords' sudden interest in addiction programs ..."

no roots here, or were simply young, mobile and uncaring. Whatever the reason, they disappeared. One of the apartment houses on East 52nd Street is now half-empty. It makes life a little more difficult for those who are staying.

Eleanor Appling had lived on 867 Third Avenue for sixteen years. She wanted to stay. During her frequent trips, her next-door neighbors would look after her apartment. They moved. She became worried, discouraged, and finally accepted another apartment downtown. She likes her new place, though it's "half the space for twice the rent," and she could only get a short lease. At 865 Third Avenue, all windows are tinted above the street floor. The same thing has happened at 863 Third Avenue.

Of all the devices for getting people out of their homes, nothing is more prized than a simple, straightforward, old-fashioned eviction. No fee to haggle over. No relocation headaches. No bother. Violation of lease seems to provide the handiest ground for an eviction action. One tenant in 249 East 52nd was traveling in Europe. She allowed friends to use her apartment. A notice was posted on her door enjoining her to correct said violation forthwith. The notice was signed Sentimental Realty Corp. She could not be contacted on time, and she lost the apartment. There are many similar stories.

For commercial tenants the pattern is similar. One had his rent checks returned for many months. Then the landlord turned around and sued him for non-payment of rent. Small businesses don't have that much cash-flow, but this tenant had carefully put aside the accumulated rent money. He won his case in court and paid his rent. Not long after, however, the tenant finally moved. He was curiously quiet—absolutely mum—about why he decided to move after fighting so hard to stay.

Another commercial tenant obtained a twenty-one-year lease on his building in 1956. The lease featured a "first refusal" clause, providing that the tenant would have first crack at purchasing the building if it came up for sale. He had put a lot of his own money into the building—plumbing, wiring, additions—and he was sure that, some day, the building would be his. In April, 1970, the owner of that building decided to offer it for sale. The tenant asserted his right to purchase. The owner presented him with a three-page-long purchase proposal containing several highly unorthodox clauses. The most striking of

these demanded that the purchase price be paid entirely in cash. The tenant was given three weeks to meet the price and raise the money. He was unable to do so.

At 204-211 East 53rd Street stands a pleasant five-story apartment house called The Town House. It was completely renovated fifteen years ago. It sports New Orleans-type balconies and sits atop a Chinese restaurant, the Jade Palace. When Portadown Corp. bought the building in February, 1970, all the apartments—about 30—were rented. In November, after a remarkably swift deterioration of services and a sudden inexplicable flowering of graffiti in the halls, there were three tenants left in the building. Then it was offered, rent-free, for the use of Odyssey House, the private rehabilitation agency for drug addicts. Odyssey House people moved into all the vacated apartments. At this writing, Ana Carrigan, a woman in her early thirties, is the only tenant left in the building. She says that she feels "much more protected since Odyssey House people moved in." They are responsible for the maintenance of the building, which has never been so well kept. They are friendly. Some of them have children. "What would I do without them here?" Ana says.

It's hard to quarrel with an impulse to do good. But, given what has been going on in my block these past few years, it's impossible not to wonder about the philanthropic motives of some of the landlords here and their sudden interest in addiction programs. Since last November six locations on our block have been offered rent-free (I am told some staff-members pay minimal rent) to Odyssey House—the previously mentioned Town House; a storefront at 867 Third Avenue; the second floor of 214 East 53rd Street (the ground floor is a branch office of Urban Relocation Corp.); and three brownstones at 207, 211, and 229 East 52nd Street. Odyssey House has ten locations in the Bronx and Manhattan. Curious that six are concentrated right here, on this one block threatened with demolition.

It's an uneasy time, then, and one kind of fear quickly leads to another. Within a six-month period, between September, 1970 and February, 1971, there were four fires on East 52nd Street, at numbers 201, 207, 211, and 225. The fire marshall conducting the investigation declared over the phone that they were accidental. But his find-

ings have not been very reassuring. Routine horrors that most New Yorkers might note but quickly dismiss from their minds take root in ours. A recent news story, for example, under the headline "Bronx Landlord Sentenced in Arson Deaths of 3 Boys," told of a landlord who, in order to collect fire insurance and drive out tenants, asked a former tenant to set fire to a fifteen-family, rent-controlled building. The former tenant recruited three young men to help him and locked them inside a burning room, where they died. The State Supreme Court sentenced the landlord to an indeterminate term of up to ten years in prison. The former tenant was charged with murder and arson, and received a twenty-year sentence. The story was not quickly forgotten on East 53rd Street.

But there is no end to the stories on our block these days—stories of mail-boxes being broken into, increased robberies and burglaries. A restaurant owner on our block since 1965 was burglarized three times during the last year. During the five previous years, he had had one burglary. Maybe the same thing is happening all over the city, but . . .

At least 25 buildings in our block have changed hands during the last couple of years. Few of the tenants of these buildings know the identity of their landlord, since they all deal with Citadel Management and Urban Relocation. Who are the new landlords who have developed such an affinity for our block? What are their plans?

A search at the Hall of Records yielded the names of many different purchasers of the properties on the square block bounded by 52nd, 53rd, Second and Third. But further digging revealed that the principal in many cases was one Edwin Glickman, c/o Madison Associates, 301 East 57th Street.

I tried to interview Mr. Glickman to ask him to clarify his plans. Was he "assembling" the block, as they say, for himself? For someone else? I had heard the name of Tishman, a major real-estate builder and operator, mentioned very often in rumor. Mr. Glickman informed me, courteously but curtly by phone, that an interview would not be "constructive" at this time, that indeed it would be "imprudent" for him to discuss plans while in the process of assembling. Robert Tishman told me, when I called him, that "the property is not being assembled for us."

NEW YORK MAGAZINE ARTICLE

According to rumors, Mr. Glickman or someone intends to put up two large buildings one on each avenue, with a connecting arcade. One would be an office building, the other an apartment building. Current zoning regulations would seem to make these plans possible. Between 52nd and 53rd Streets, Third Avenue is zoned C6-6. This would allow an office building of some half a million square feet extending 150 feet into the side streets. Along Second Avenue, and extending 100 feet into the side streets, the zoning is C1-9, under which a high rise would be out of the question.

Between the avenues, the streets are zoned R-8 (residential only; auxiliary commercial facilities permitted on the ground floor). If, as is rumored, Mr. Glickman plans an arcade connecting his two buildings, this could be considered a "public benefit." New York City's "builder incentive" program allows developers to obtain higher-density allowances in low-density areas if they provide certain amenities. Another high rise coming up?

No one could possibly object to razing a block of dilapidated buildings to make way for sound housing. There are hundreds of such run-down blocks in the city. But destroying a block of perfectly sound houses, and replacing it with twin high rises, arcade included, makes absolutely no sense to me. Ever since my block started to get "assembled," I have been getting together some thoughts and questions of my own. They all come down to this: How much longer should we allow money and money alone—to sort out what gets built and what gets destroyed in New York City? Have residents no voice in what happens to their homes? Are there no agencies responsible for the preservation of houses that are worth preserving? The Department of City Planning seems preoccupied with plans for future construction. The department has had little to say about the destruction of neighborhoods. And the preservation of "landmarks" doesn't begin to answer the question. By any rational test save maximum return on capital my block is worth preserving. But, alas, it is no landmark.

A friend asked me whether this whole situation—the threatened loss of my home, the anonymity of the forces operating on me and my neighbors—made me feel alienated. I answered: "No. I am not alienated. I am outraged."

Some of the tenants and homeowners on my block, at least, refuse to be intimidated. They like it here on 53rd Street. They are stubborn. But, how long will they be able to hold out? Can anybody help?

New York News Inc.

New York, N.Y. 10017, Sunday, August 29, 1971

Block Kicks Hi-Riser

By DONALD FLYNN

NORTHWARD up Third Ave. from 42d St., where the El used to rumble, the high-rise buildings stand in a row. At 52d St., the skyline dips for two blocks of brownstones, and then, with the U.S. Post Office at 54th St., it leaps upward again.

At 55th St., P.J. Clarke's still stands among the giants, a monument to one little man's defiance of the monster builders.

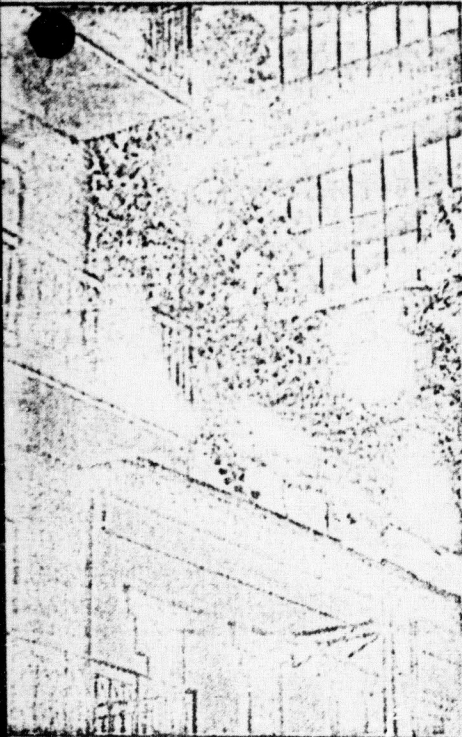
One of those two blocks of brownstones—the one bounded by E. 52d St., Third Ave., E. 53d St. and Second Ave—is under attack by a builder who wants to put up another office building.

But, like Clarke's, some of the residents on the block say they're not going to budge. It's too nice a neighborhood, they say.

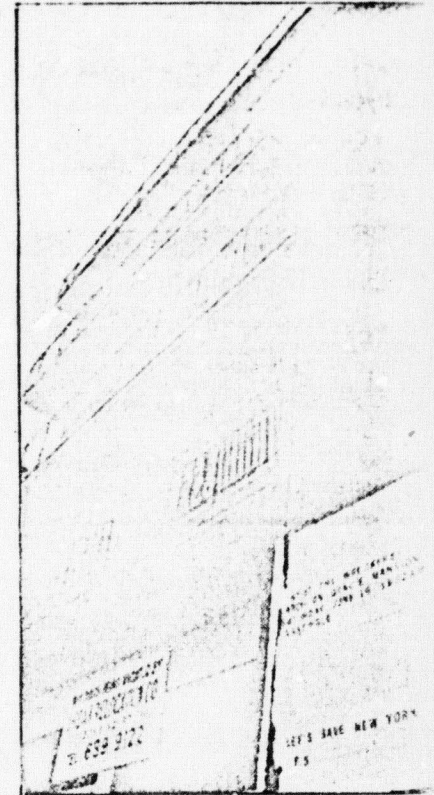
"I've told them I will not sell for \$1 million," said florist William Fuss, 67, who runs a baroque artificial flower store at 218 E. 53d St.

The properties in the block are being bought up by Madison Equities, run by real estate man Edwin J. Glickman, and a company called the Urban Relocation

(Continued on page 18, col. 1)

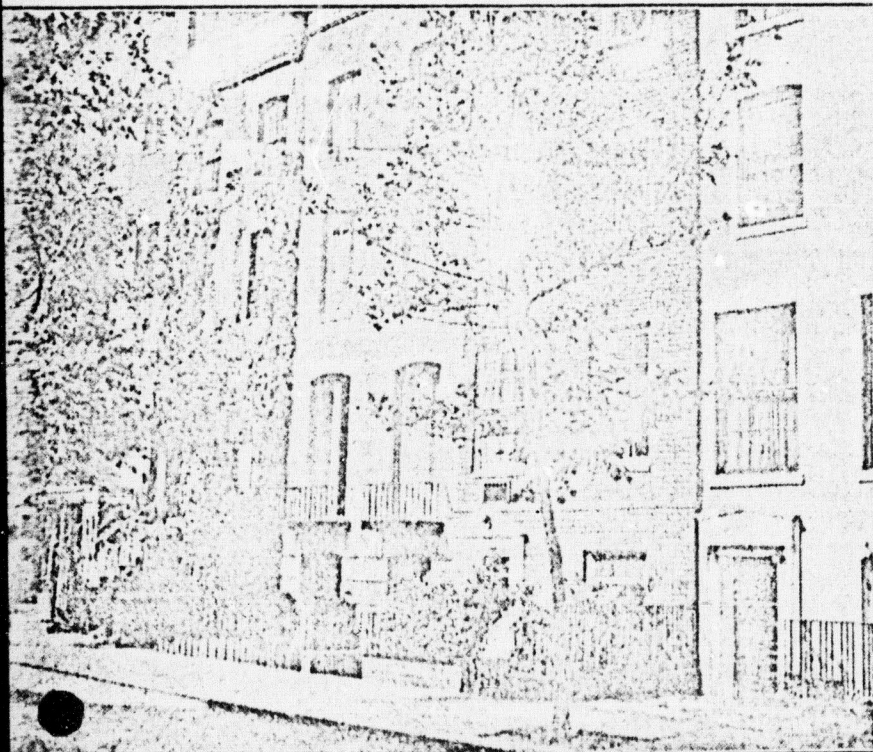


Top Trees and balconies dot the block.

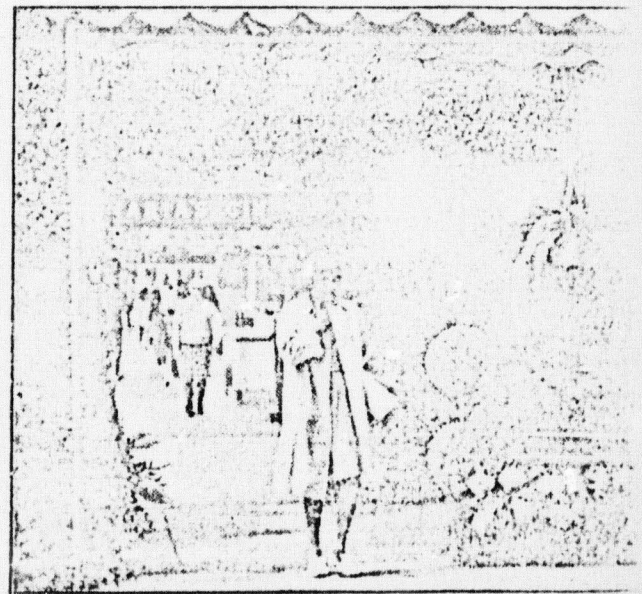


NEWS photo

Vacated
building(→)
sports a sign
of warning.



Ivy grows up some of the brownstones while trees line the streets.



NEWS photos by

Flower shop has artificial vines and potted plants.

Tenants Rebel To Skyscraper On Its Block

(Continued from page 1)

Co. Inc. is offering to find apartments for people who are ready to move.

Nailing Properties

Brownstones are being boarded up and slapped with big, official-looking signs that give the impression the city, or some official agency, is taking over the block.

Various of the vacant buildings have been offered rent-free to Odyssey House groups, which help drug addicts. There are, in fact, six Odyssey House locations in this one block, and neighborhood residents say it's harassment to force them out.

The East 50s Association is fighting the destruction of the block. Marion Reinder of 211 E. 53d St., president of the association said, "This is a real neighborhood, a community. It has to be saved."

According to Mrs. Reinder, many owners have refused to sell and are determined to stay. On E. 53d St., for instance, Catholic Charities, the Salvation Army and the USO will not leave, she said.

Others joining her in the fight, she said, include the Theosophical Society on E. 53d St., and at least two other private owners of brownstones.

'Why Sell?'

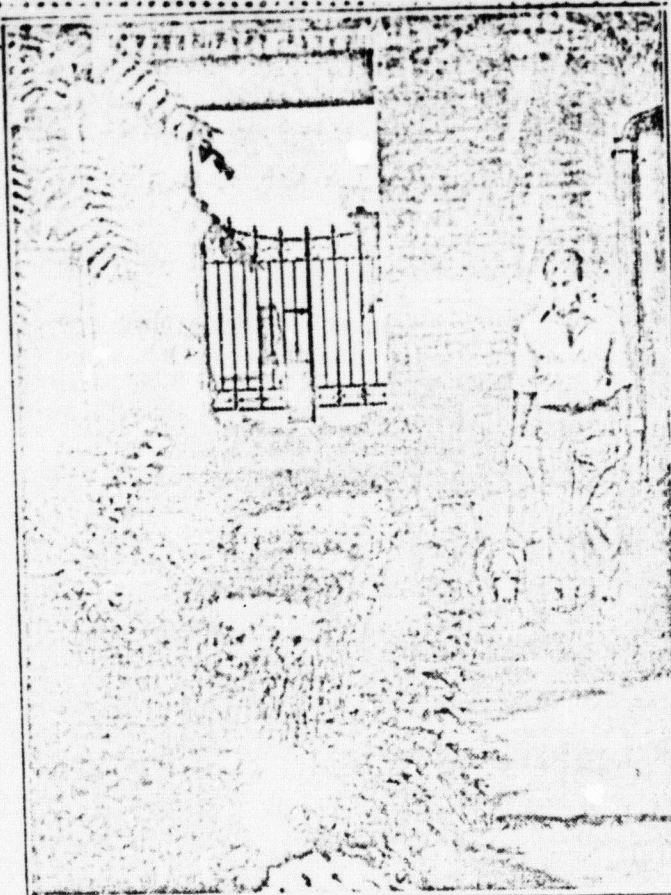
Fuss, who came here from Dusseldorf, Germany, and bought his building eight years ago, declared, "I love my job and I love my customers. Why should I sell?"

He and his wife said the developers started trying to buy him out three or four years ago and are still at it. When they refused to sell, building inspectors suddenly showed up, said Fuss.

"They say everyone has his price," said Fuss. "Well, some do not have a price. The money doesn't interest me in the slightest."

fdnw kaonwak onwar onwt blok

The struggle for the block continues.



NEWS photo by Jim Hughes

Stroller and dog takes walk through backyard garden.

TUESDAY, AUGUST 24, 1971

New York Post

E. 50s Neighborhood Struggles to Save Its Life

But there was talk that someone was negotiating to buy the buildings.

Then the signs went up: "BUILDINGS BEING VACATED BY URBAN RELOCATION CO."

And finally came the inevitable: tinned-up windows, shops and restaurants beginning to close, tenants moving out.

The pattern has been duplicated in many Manhattan neighborhoods in recent years as older, low-rent buildings are torn down to make way for luxury apartment towers, office buildings or institutional expansion.

But it seemed especially tragic to residents of the East 50s when they learned last year that the E. 52d St.-E. 53d St. block between Second and Third Aves. was a target for demolition.

The two threatened streets—the north side of E. 52d St. and the south side of E. 53d St.—retain the flavor and diversity that many New York neighborhoods used to have.

There are brownstone residences with attractive back yards, tenements, several restaurants and bars, a five-story apartment building with ironwork balconies, a book shop, florists and other small businesses.

Mrs. Marion Reider, president of the East Fifties Assn., said the two streets as well as some surrounding blocks were "a real people's East Side."

"It's small, it's a neighborhood, it's a community," said Mrs. Reider. "It's the kind of area where people seem to talk to one another, where you get a smile or a hello."

The East 50s Assn., which includes residents, storekeepers and businessmen, became

active when the assemblage of land by Edwin J. Glickman of Madison Equities, Inc., became known.

The main strategy, said Association secretary Pat Beadle, has been to inform tenants of their right to remain in the buildings bought by Glickman.

In addition, the Association has mounted a petition campaign to obtain rezoning of the two side streets to make it even harder for Glickman to put up high-rise buildings there.

At present, the mid-blocks of E. 52d St. and E. 53d St. are zoned R-8, which in effect rules out construction of high-rise structures.

Glickman has purchased most of the E. 52d St.-E. 53d St. block front along Third Av., but he must still buy many properties along the side streets before he can build.

Because of uncertain market conditions, Glickman said, "It is still too early to tell" what he will put up.

But he said it was likely he would construct a high-rise luxury tower—possibly combined with commercial space—fronting on Third Av.

He said that toward the middle of the block he might construct "town houses" or low-rise luxury apartments—both of which are permitted within the present zoning.

Both the residents and William Bardel, deputy director of the City Planning Dept.'s office of midtown development, expressed doubt that low-density structures would be economically feasible.

The residents are convinced Glickman will eventually seek to have the side streets rezoned for high-density buildings, and this is why they organized their petition campaign.

Bardel said the city's policy was to oppose rezoning that would lead to destruction of sound housing, but community leaders believe the city has frequently favored developers.

According to Glickman, redevelopment would "change the neighborhood for the better."

Residents say the community would be less interesting and less attractive. Not only would the small shops and restaurants disappear, they say, but older, moderate-income tenants would not be able to live in the community.

Community leaders realize the fight may be futile. Other parts of the East Side, including some blocks in the East Fifties, have already lost similar battles.

Some tenants have already left the E. 52d-E. 53d St. block. Last week the Cafe Europa, a French restaurant, closed its doors on E. 53d St.

Peter Colthup, owner of the Cafe Europa, said he had wanted to remain but sold his lease when he found a suitable location a block away. If he stayed, he might not have found another spot when his lease ran out.

"I still have faith in people," said Mrs. Reider, whose modern apartment house on the north side of E. 53d St. is not endangered.

YES! Count me in! I enclose dues for membership in the East Fifties Association. \$5.00 Tenant \$25.00 Owner/Business

Name _____
Address _____

Phone _____
Business _____

Home _____

Make checks payable to the East Fifties Association and mail to:

THE EAST FIFTIES ASSOCIATION
P.O. Box 384, F.D.R. Station, New York, N.Y. 10022

Join us Now!

A-178

THE EAST FIFTIES ASSOCIATION
P.O. Box 384, F.D.R. Station, New York, N.Y. 10022

A voluntary association benefiting residents, businessmen and property owners from 51st to 54th Streets between Lexington Avenue and the East River.

October, 1970

East 53rd Going, Going...

To the Editor:

My husband and I live on East 53d Street between Third and Second Avenues. It's not architecturally great but it has the true flavor of New York City.

The north side of the street has one modern building, 14 stories high and 11 years old; a row of beautifully kept tenements with exciting boutiques on the ground floors and in the basements; a small brownstone which is occupied by a delightful florist; a parking garage; a nursery school day-care center, and two shuttered brownstones.

The south side of the street has a five-story apartment building with ironwork balconies in an ersatz New Orleans style, just in bad enough taste to be acceptable; many brownstones which house several of the city's better known restaurants — Le Pont Neuf, Le Madrigal, Maria's Cien, Cafe Europa — and two swinging bars, the Theosophy Society and Book Shop; an antique shop; a hand laundry; an all-fake florist; a landscape florist, and several just brownstones.

As you can see it's really New York — with a wonderful mixture of people, old and young. It's a safe street, it's an exciting street and it's a pleasant street.

Now the vultures have struck. Suddenly one afternoon a just vacated store was boarded up with sheet metal and a sign put up for the "Urban Relocation Co." The New Orleans style apartment house has also sprouted an "Urban Relocation Co." sign.

This, of course, means that the tenants will be forced out of their apartments. We have been told that the company is negotiating to buy up the entire street and build another office tower. And so more people in the moderate rental older buildings will be without apartments.

My questions are:

1) What can be done to halt the destruction? (I am not personally involved in the question of an apartment since we live in the modern, 11-year-old building.)

2) How can a company be allowed to use a name like "Urban Relocation" which gives it the sound of an official activity of the City of New York?

3) What can we do about the store that is boarded up with sheet metal? This suddenly gives the block the look and feeling of a slum.

Help!

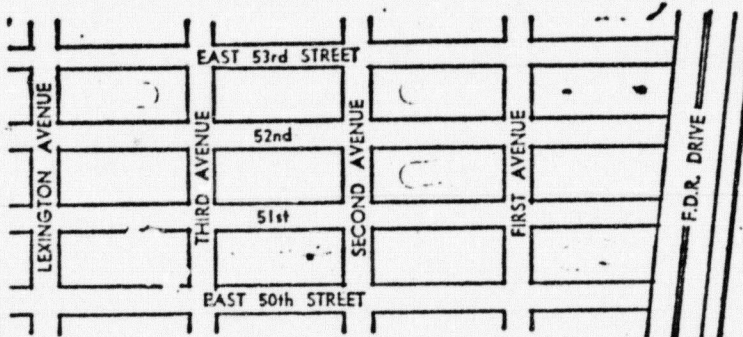
Mrs. David Reider
New York City

The Wrong Road Is A High Rise

The city's "builder incentive" program, under which developers of luxury housing can build to high R-10 densities in lower density, socially disastrous and

(Continued on Page 4)

If You Live or Work in This Neighborhood



WARNING!

Our neighborhood as we know it — and like it — may soon be another victim of land-manipulated builders. The warning signs are up—visible to anyone interested in preserving the character of the East Fifties. The signs are brutally direct: "Building Being Vacated By Urban Relocation Co." Which means, quite simply, that somebody is acquiring existing buildings that give the flavor to our community in order to replace them with new buildings that will destroy that flavor — and in the process, your home. Should we stand idly by while some builder slowly nibbles away at our neighborhood, preparing perhaps to introduce another monster of office building or one of those graceless skyscraper apartments? The residents of other communities — threatened as we are — have banded together successfully to preserve and protect their neighborhoods. So must we. If you share our alarm, join us in the East Fifties Association—before it is too late—in meeting this threat through concerted community action.

EMERGENCY MEETING

of the

EAST FIFTIES ASSOCIATION

TUESDAY, OCTOBER 27

8:30 P.M.

TURTLE BAY MUSIC SCHOOL
244 EAST 52nd STREET

IF YOU CAN'T COME BUT WANT TO HELP SEND
US A CONTRIBUTION. MAKE YOUR CHECK PAY-
ABLE TO THE EAST FIFTIES ASSOCIATION AND
SEND TO 243 E. 52nd ST. c/o PAT BEADLE, Secretary.

(See Coupon On Page Four)

(ALL ARTICLES EXCERPTED FROM THE NEW YORK TIMES)

What Others Did

In the spring of 1969, Murray Hill residents woke up in their snug little brownstones to find the threat of a new blockbusting looming over them.

The threat of a new blockbust? Laird Properties, Inc., a division of Laird, Incorporated, investment bankers, in a joint venture with Independence Associates had acquired the full block on the west side of Third Avenue from 37th to 38th Street. They proposed to put up a 32-story, combined commercial and residential building with five levels of garages, including commercial parking.

Laird carried in its hand a rendering of a standard design of paralyzing bulk, later characterized by the Murray Hill group as "Miami jazzy," which looked like a lot of other commercial New York buildings, only bigger.

It was a typical New York story. The small, older, carefully preserved landmark community, jealous of its historic architecture, townhouse living and such amenities as sun, air, light, gardens and relative serenity, was threatened by the increasing pressures of surrounding commercializing and the standard operating procedures and products of New York real estate development.

The end of the story, however, is not typical at all.

Architecturally, instead of what the Murray Hill residents called "tasteless bulk," there will be a tall, slender tower with a handsome, restrained exterior, carefully situated on the plot to cast the smallest shadow possible on the adjoining properties. Painstaking shadow studies were made for every time of year, for different building shapes.

The changes and improvements came after the sound and fury reached Laird's top executives. An upper-echelon managerial group took over the project from its real estate developers. For the first time, extensive design specifications had been written into the plan filed with the city. Everybody feels mutually served. And both sides know that the results, even in terms of today's market realities, are superior.

The way to better building led through at least eight appearances before the Board of Standards and Appeals in 1969 and 1970, more than 50 meetings of the Murray Hill Association and a stormy open hearing before Community Planning Board No. 6. In five stages of redesign, the building was scaled down five times. There were moments, according to one Laird executive, when "everyone went home and felt like throwing bricks."

The protest was started at the Board of Standards and Appeals by those Murray Hill property owners who were entitled to enter objections to variances requested for construction within a 200-foot radius of their land. In the fall of 1969, Planning

(Continued on Page 6)

A-179

EAST FIFTIES

BUILDINGS BEING VACATED BY
URBAN RELOCATION CO.
 205 E. 42 ST
 TEL. 689-9122

A Gone

C Gone

EAST 53

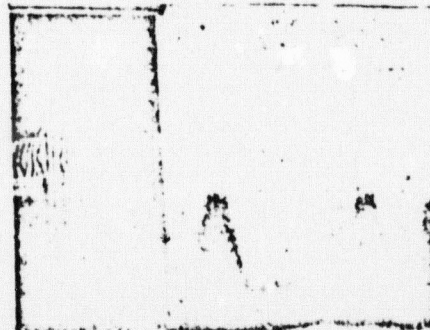
THIRD AVENUE

EAST 52nd

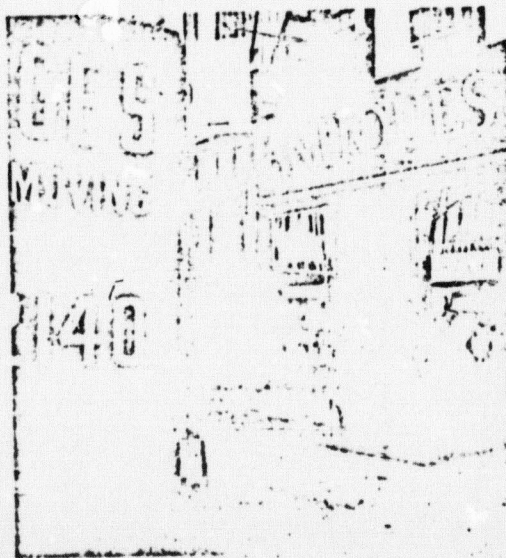
WHAT'S HAPPENING... Black areas are property
 by vacated. Grey areas:

B & A As They Were

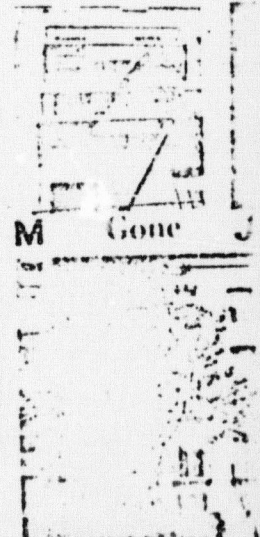
BUILDINGS BEING VACATED BY
URBAN RELOCATION CO.
 205 E. 42nd ST
 TEL. 689-9122



B Gone



N Gone



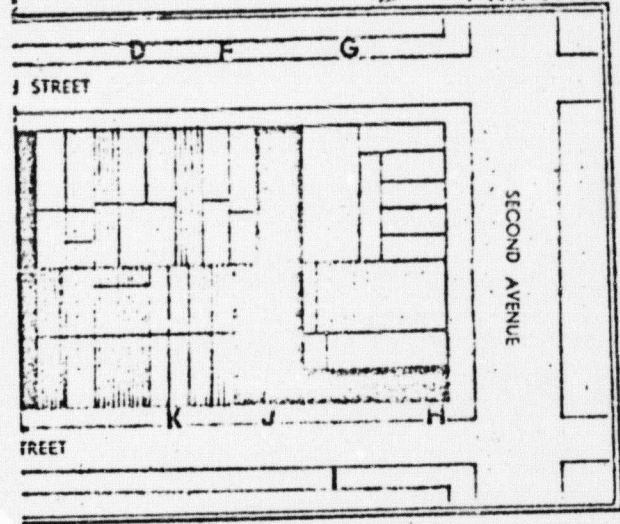
K Rebuilding

A-180



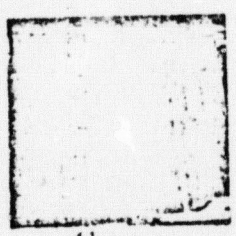
D Still Here

E Gone



F Still Here

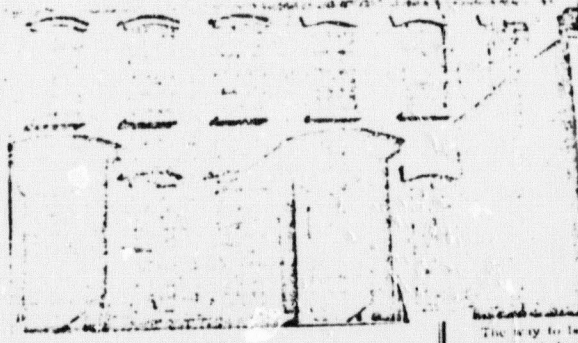
that have recently changed hands. Several of these are being completely renovated whose owners have been approached by developers or agents.



G Gone



H BUILDING Call: 1



I

TURTLE BAY MUSIC SCHOOL 244 EAST 52nd STREET

IF YOU CAN'T COME BUT WANT TO HELP SEND US A CONTRIBUTION. MAKE YOUR CHECK PAYABLE TO THE EAST FIFTIES ASSOCIATION AND SEND TO 243 E. 52nd ST. c/o PAT BEADLE, Secretary.

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(Continued on Page 4)

Good For Our Side

Until last spring the Buildings Department had permitted owners of plots with mixed zoning to average the permissible densities and place the building on the site without regard to the invisible boundaries of the zoning map.

But under a new ruling in the spring, this flexibility, called weighted averaging, was ruled out. The department decided that builders would have to heed the zoning in each district in designing their structure when it was in a mixed-zoning site.

Others Did...

(Continued from Page 1)

Board No. 6 voted unanimously to oppose the scheme on the basis of its bulk commercial use and transient parking.

In November, the Department of City Planning was asked to investigate by the Murray Hill Association and came up with a negative finding on the plans. The community was encouraged to make its own determination of the issues.

After uncounted conferences among builders, residents and architects led to scheme No. 5. Planning Board No. 6 approved the changes and called the project an example of what a responsible builder could do in conscientious negotiation with the community.

The Murray Hill Association say the developers, a sophisticated group of professionals who — a what — were doing.

Laird Properties, says the Murray Hill Association, a sophisticated organization that cares what it is doing.

The results are good business and good urbanism.

Why We Are Nervous

A mood of nervous uncertainty has taken hold of many residents in the low 50's with the sudden appearance of a few large and seemingly ominous signs on 53d Street east of Third Avenue. Farther uptown in Yorkville, that mood has already turned to anger among other tenants whose nerves have been rubbed raw after weeks of seeing that sign in their midst.

It reads, in bold letters, "Buildings Being Vacated by Urban Relocation Company." Its appearance in a neighborhood is often the first indication that residents have that a redevelopment plan is taking effect. Those tenants being asked to move will also receive a letter from the company informing them of this, and offering assistance in finding an apartment.

Urban Relocation is one of the two private real estate companies in the city specializing in the relocation of tenants from sites where owners plan a redevelopment.

This phase of redevelopment has become perhaps the most emotionally trying and politically sensitive aspect of new construction in the city. City officials, local political representatives and the courts are drawn in. Citizens groups charge that the character of neighborhoods is being destroyed, and that tenants are subjected to hardship and harassment in a period of an acute housing shortage.

Increasingly, tenant groups have sprung up to protect tenants from any such coercion. One, Tenants Against Demolition, with headquarters at 331 East 70th Street, goes so far as to advocate a complete stop at demolitions as the only protection to tenants while the "terrible housing shortage" lasts.

"Community organizations and neighborhood groups have taken over."

The pressure on tenants can be strong, too. Tenants Against Demolition tells of an instance in which "not only did the landlord cut services, but the agent's employees came in and wrecked the building." In one case, it was charged, the superintendent and a contractor entered some vacant, locked apartments in a still-inhabited building and chopped holes in the walls and tore down the kitchen cupboards. The aim apparently was to keep out squatters.

It is tactics of this kind that have helped spur the tenant protection movement.

Shortage Hurts And Will Hurt More

The shortage of decent places to live is weighing heavily on the people of New York City, and it is expected to grow worse for at least the next two or three years.

The scarcity of apartments, more acute now than at any time since the years immediately following World War II, has forced families of nearly every economic level to hold on jealously to housing that is cramped or shoddy.

The shortage has provoked low-income squatters into occupying half-vacant buildings illegally. It has made "key money" — payments under the table to those landlords, real-estate agents and superintendents who can make apartments available for rent — a common practice.

It has led some landlords to threaten, harass and even assault tenants who refuse to move from buildings scheduled for demolition or renovation. And it has allowed some tenants, who have the money to hire lawyers, to extract huge sums as "relocation allowances" from owners who want apartments empty so they can build new buildings.

The crisis could continue beyond the next two or three years. But builders and housing experts say they are sure it will last at least that long, because it would take that amount of time for a builder — beginning now — to assemble land, evict tenants, demolish old structures and put up a new apartment house.

Therefore, builders are interested almost exclusively in the choicest, most fashionable neighborhoods — Manhattan's East Side, for example — where the land is so expensive that builders insist that zoning must be changed to allow them to put more apartments per block, so the costs can be divided among more tenants, and rentals kept within reach, at least for wealthy tenants.

But this means taller buildings, more congested streets and subways, less light and air. Donald H. Elliott, chairman of the City Planning Commission, declared emphatically in an interview that no such increases in density would be allowed on side streets, where the builders want it most.

"The builders are saying, 'We don't want to build except on perfect sites,'" Mr. Elliott remarked. "There's still a lot of room for housing in Manhattan, but I don't think it's in the hot market areas."

"If you ask them if they want to build on the mid-West Side

[west of Times Square], they say no. The real-estate industry has not been willing to gamble.

Since something must be torn down almost everywhere in New York before anything new can be put up, the builders' interest in stable, white middle-class areas also means they are pushing to tear down solid, relatively comfortable housing.

This seems nonsensical to planners in a city where so much terrible housing has been ripe for demolition since the turn of the century. Mr. Elliott said he would be willing to increase permissible densities in certain less-desirable neighborhoods to get bad housing replaced, but he ruled out such a move on the fashionable East Side.

Tenants in rent-controlled apartments have organized effectively and enlisted the help of City Councilmen and state legislators to fight zoning changes proposed for their neighborhoods. They know the changes would prompt landlords to evict them (an empty rent-controlled building is worth more than a full one in good areas) and sell the structures to developers for replacement with high-rise, high-rent apartment towers which many criticize as cramped and sterile.

If an entrepreneur painfully assembles a large site from a number of different owners, he then has to evict tenants. The rent-control law regulates evictions severely, requiring owners to make applications to the city, appear for a hearing, and provide relocation payments.

Builders say that often tenants are successful in delaying eviction, and it usually takes two or three years to empty a building. That is why they are willing to pay more for an empty building than a full one. And that is why they expect the housing shortage to grow more acute during the next two or three years, because no land is now being assembled, they say.

An entrepreneur who may have invested millions of dollars in the property and who may be paying thousands a month in taxes while receiving little return will often pay thousands to the last few holdout tenants to get them off the site so he can start demolition.

An owner may threaten tenants, attack them, move derelicts into the building or cut off their heat, water and electricity as some brownstone owners on the West Side have done.

On East 53rd Street

One could put a fence around the East 53d Street block between Second and Third Avenues and package it as a small city. It's the block that has almost everything, including an easy-going air where shopkeepers tuck things from each other or sit on the stoops and chat.

The block houses eight restaurants, ranging from the chic Le Madrigal through Maria's Cin Cin ("Home of the Purple Martini") and a luncheonette called Munch Time U.S.A. There are at least seven boutiques, their numbers fluctuating as one succeeds and others pull out. Six decorating or antique shops, again add or subtract one. Five art galleries and/or bookshops. Three florists, including one just for artificial flowers. Two pet shops. And one each of nursery school and spiritual reader.

High Rise...

(Continued from Page 1)

doesn't help solve our housing problems.

What rezoning to high density can do, however, is to produce the kinds of profits builders haven't enjoyed since the days of the old pre-1961 zoning ordinance.

The 1961 zoning ordinance put a brake on these profits.

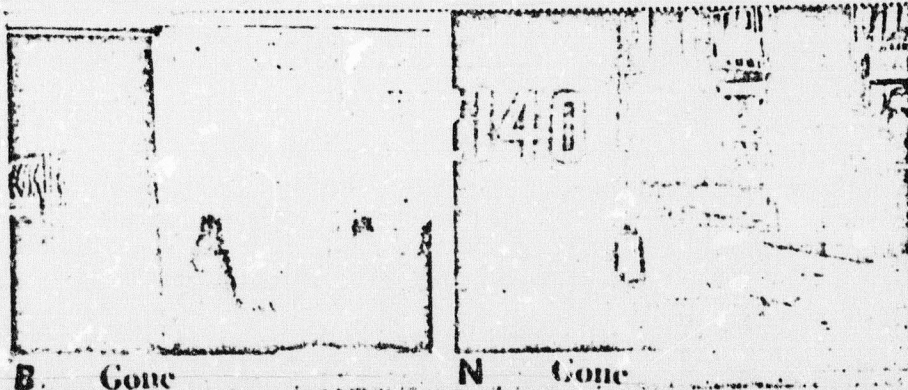
These profits are what Frank Lloyd Wright used to call "the unearned increment from the land." For decades, that distinguished architect refused to design buildings in big cities. He was angered by the imperatives of profit which overrode every consideration of livability, amenity or aesthetics. His only building in New York City, the Guggenheim Museum, most builders don't care if they overbuild, if they jam streets and subways, ruin neighborhoods or overload utilities, schools and other community facilities. Maximum profit is their sole objective.

Keeping a firm hold on the "unearned increment" gold mine, the administration is using its power to control densities to reward old friends and to make new ones. Builders are encouraged to come down to "city hall" and see whether a deal can be made. Behind a facade of "public benefits" such as token public housing, arcades, theaters, aesthetics, development to the "highest and best use" and the like, the administration has been selling high densities to the highest bidder.

Using the fig in new construction as a smoke screen, the builders are out to recover the right to profits from the rape of the land.

We can no longer afford the builder who exploits communities and land values. Local communities are not a lifeline of the builders, or even of city administrations. In the rebuilding of any area such as Third Avenue, community needs for low-income and middle-income housing must be satisfied, needed amenities must be provided, desirable limitations on the density of development must be respected.

If luxury builders cannot recognize these facts and be more responsive to them, there is no justification for their existence.



B. Gone

N. Gone

A-182

THE EAST FIFTIES ASSOCIATION

The Association has launched an intensive campaign aimed at preserving the existing residences and pleasant atmosphere of the neighborhood. Those who are familiar with the tree-lined streets, fascinating boulevards, and charming brownstones in the East Fifties realize why such neighborhoods must not die if the city is to live.

In the past six months, however, real estate developers who are anxious to acquire the area for their own purposes have done everything possible to deteriorate the neighborhood and to harass tenants and owners. The changes in the area, particularly 52nd and 53rd Streets between Second and Third Avenues, have been dramatic and far-reaching. A brief walk on these streets will bear witness to what is happening: the defacement of fine homes and businesses by huge, ugly signs announcing that the Urban Relocation Company is vacating the premises; the loitering of undesirable and often intoxicated persons in vestibules, hallways, and on corners; the use of vestibules in private homes as public urinals; increased litter; graffiti in vestibules and hallways; drug trafficking; small fires and at least one serious one (see below); much higher frequency of breakins and assaults on people on the street; breaking into mailboxes and stealing mail.

The residents in the area are frightened to walk alone even during the day because of the prevailing atmosphere. A woman was followed home and assaulted in her vestibule at 243 East 52nd Street and several purse snatchings have occurred recently. Mothers no longer allow their children to play on the street. At 203 East 52nd Street almost every night someone enters the building and attempts to break in or to sleep in the vestibule overnight; no resident feels safe without the protection of a dog.

Four fires have occurred on East 52nd Street between Second and Third Avenues: at 201 on September 7, 1970; at 225 on January 26, 1971; at 211 on January 29, 1971; at 207 on February 11, 1971. The most serious fire (225 E. 52) gutted three floors of a four-story building and it is now unoccupied. This is the only building of the four which is not being vacated by the Urban Relocation Company. The others are owned by Edwin J. Glickman, managed by Citadel Management, and are being vacated by Urban Relocation Company. These same parties have brought in an Odyssey House Center on 867 Third Avenue, Odyssey House personnel at 210 East 53rd, and after the fire at 211 East 52nd the Odyssey House renovated the building and now occupies it.

Invisible as well as visible harassment has taken its toll on the neighborhood. At 226 East 53rd (owned and managed by the above) tenants suffered from lack of heat and hot water all winter. Mrs. Siattias, an elderly woman, was sent an eviction notice for failure to pay rent and was removed from the building without further notice; two days later, her husband died. Similarly, at 249 East 52nd, heat and hot water services were a problem last winter. Citadel Management denied having received the rent of Mr. Malcolm Wells and wanted to evict him; he became very upset since he had always mailed his rent. A few weeks of harassment ended in a tragic death when Mr. Wells suffered a heart attack. Since then, tenants in buildings managed by Citadel and being vacated by Urban Relocation send their rent

EAST FIFTIES ASS'N ANNOUNCEMENT

checks by certified or registered mail. Obscene graffiti has also distressed the residents of this rent-controlled building who are primarily older people and long-term occupants of their apartments. Not only do they feel threatened but they also know that they can never find comparable apartments at the favorable rents they now have. Many feel that if they are removed, they will have to leave the city since they cannot afford to go into more expensive apartments. The Urban Relocation Company keeps calling them to offer them other apartments, but these are never at the same low rent as their current quarters. All tenants of these buildings feel threatened because they have already seen that any pretext will be used to force them to vacate their apartments. One tenant at 247 East 52nd just won a court case against eviction by Urban Relocation. At least two businesses on East 53rd Street are placing their rent in escrow since Citadel and Urban refuse to accept their rent.

The attached sheet relates what the East Fifties has done in the past six months to preserve the neighborhood; we have explored every legal and civic avenue known to us, yet we feel that our actions have not been effective enough in keeping the neighborhood from deteriorating and in curbing unethical practices by speculating realtors and developers who want to gain control of the area. Our progress has been slow while they have chipped away at the neighborhood day by day. Do honest and decent citizens have a chance against unscrupulous speculators? We need help now. Who will give it to us? Specifically, how can we make the laws enforceable? Who will pressure the Department of Buildings to do its job in having the Urban Relocation signs removed? Who will see to it that the State investigation is expedited?

Background References on the Urban Relocation Company's Practices:

New York Magazine article written to expose practices in various neighborhoods, March 23, 1970.

Sunday News, "Private Firms Help Push Out Low-Renters," p. 58, February 28, 1971.

"Burden Accuses Odyssey House," New York Times, March 7, 1971.

Daily News, "Tenants Paint Halls in Landlord Fight, March 15, 1971.

Note: A bill has reached the State Legislature against Urban Relocation, particularly the fraudulent use of such a name when it is a private corporation, but no action has been taken. How can this bill be moved along instead of having it delayed? Time is of the essence in our cause since the neighborhood is being destroyed day by day as we wait for the legal machinery to help us defend our rights.

EAST FIFTIES ASS'N ANNOUNCEMENT

Activities of the East Fifties Association in the past Six Months

1. The following persons have been made aware of the problem:

Senator William F. Buckley Jr.
Carol Greitzer, City Council
Congressman Edward I. Koch
State Assemblyman Peter A. Berle
Senator Roy M. Goodman
Councilman-at-Large Eldon R. Clingan
Councilman-at-Large Robert I. Postel
Congressman William F. Ryan
Bella S. Abzug, U. S. Congress
Albert A. Blumenthal, City Council
Mayor John V. Lindsay
Senator Jacob K. Javits
Borough President Percy Sutton
Governor Nelson A. Rockefeller
Carter Burden, City Council
Theodore S. Weiss, City Council
Manfred Ohrenstein, State Senate
Andrew Stein, State Assembly
Jerome Kretchmer, Environmental Protection Administration
Bess Meyerson Grant, Consumer Protection Administration
Leonard Scholnick, Chairman, Buildings Commission
State Attorney General Louis J. Lefkowitz
Meyer Mencher, Assistant Attorney General
Benjamin Altman, Housing & Development Administration
Sanford D. Garelik, City Council President

2. The Association has retained an attorney, Richard Levenson, to give advice to tenants on their legal rights.
3. The Association has organized the neighborhood in a joint effort to preserve the residential atmosphere and to prevent the removal of sound buildings. Every Tuesday from 7 to 9 p. m. an Emergency Information Center at 237 East 52nd Street answers questions and gives guidance to harassed tenants and owners.

4. The following three actions were taken by the Association:

An investigation of the four fires on East 52nd Street between Second and Third Avenues was requested. Fire Marshal Paul Drayback (566-3488) is currently investigating these fires and is to file a report soon.

An investigation of Urban Relocation Company is being conducted by the Department of State Division of Licensing. Mr. Daniel M. Whitcomb (488-3664) has visited the neighborhood and is collecting data on the case.

Inspector Barbera of the Department of Buildings (566-3130) issued a summons to the Urban Relocation Company under administrative code C 26-107.1 for erecting five signs without permission. The signs also violate the R-8 zoning code because of size (four feet by eight feet). The hearing was on April 16th, but no one appeared for the Urban Relocation Company. It was rescheduled for 9:30 a. m. on April 26th.

N.Y. Post July 6, 1972

Lefky: Landlords Tried To Scare Tenants Out

By WILLIAM GREAVES

Two of the city's largest real estate management and relocation firms were charged by Attorney General Lefkowitz today with "frightening and coercing" hundreds of tenants to leave their apartments.

In a continuing crackdown, Lefkowitz named as defendants the Citadel Management Co. and Urban Relocation Co. Inc., both of 205 E. 42d St., and Seymour Sha-

piro, president of both firms.

Lefkowitz said in Supreme Court he would seek an order on July 19 to bar the firms from continuing their alleged harassment. On that date, the Attorney General also will seek to bar Relocation and Management Associates Inc., another Manhattan firm, from similar alleged acts. Suit was filed against the company last week.

In court papers today, Lefkowitz charged two firms with allowing security to deteriorate and with discontinuing essential services in 28 rent-controlled buildings. As an example, he said, trash had accumulated in halls and stairways "attracting rodents and other vermin."

"All of these conditions serve to create a climate intended to force tenants to vacate their apartments as quickly as possible," Lefkowitz said. He said the tactics were "designed to inhibit and discourage tenants, particularly the elderly, the poor and those not fully familiar with the English language, from attempting to assert their rights under relevant law and regulations."

Also, Lefkowitz said, the realtors "brought suit against the tenants for non-payment of rents when in fact they knew the rents had already been paid."

An accompanying affidavit charged that in several of the buildings, the companies had "permitted drug rehabilitation groups, unwed mothers and welfare clients to use apartments free of charge."

"While we all must sympathize with the plight of our less fortunate citizens and seem to encourage rehabili-

tation, it is quite clear that the respondents have no such laudatory motives," the affidavit said.

"They are using Odyssey House, Catholic Charities and other outstanding social agencies as a tool to frighten tenants into vacating the apartments."

2 Relocation Companies Accused of Harassment

By WALTER H. WAGGONER

Two of the city's largest relocation and management companies which are jointly owned, were accused by the state yesterday of conducting "a conscious campaign to frighten and intimidate tenants" to force them to vacate 28 Manhattan buildings proposed for demolition.

In papers filed in State Supreme Court, State Attorney General Louis J. Lefkowitz moved to bar the companies, Citadel Management Company, Inc., and Urban Relocation Company, Inc., of 205 East 42d Street, from continuing what he called harassment of tenants through discontinuance of essential services, malicious prosecution and other "fraudulent and illegal acts."

Seymour Shapiro, of the same address, is named in the suit as president of both companies.

Among the objectionable tactics, according to the Attorney General's papers, was the offering of free space to drug rehabilitation groups, unwed mothers and welfare clients.

"While we must all sympathize with the plight of our less fortunate citizens and seek to encourage rehabilitation, it is quite clear that [the companies] have no such laudatory motives," said Gregory S. Oliver, an investigator for the Attorney General's office, in an affidavit.

His complaint charged that the two companies were "using Odyssey House, Catholic Charities and other outstanding social agencies as a tool to frighten the tenants into vacating their apartments."

Although many of the tenants have succumbed to the pressure and have moved, "hundreds" still live in the threatened dwellings, according to Charles W. Stickle, spokesman for the Attorney General's office.

The buildings cited in the Lefkowitz suit are situated in Harlem, on the East and West Sides and in Greenwich Village. All are rent-controlled, with many elderly occupants, Mr. Stickle said.

'All-Out Harassment'

One of the tenants supporting the state's case is William Worthy, of 210 East 19th Street, the chairman of the 210-214 East 19th Street Tenants Committee.

He said in an affidavit that the two companies got 27 of 47 tenants to move through "all-out harassment" that included "use of an unleashed, unmuzzled German police dog running loose in the building."

Mr. Oliver, the Attorney General's chief investigator in the case, charged that "once Urban/Citadel becomes involved with a building, an all-too-familiar pattern of events begins."

He said heat and hot-water service became erratic or disappeared, public halls and stairways were left uncleared, locks were broken and left unrepaired, giving "easy access to intruders and scavengers," and garbage and trash were "deliberately" left in vacant apartments to attract rats and other vermin.

In his complaint, Mr. Worthy said that tenants received letters from Urban Relocation stating that the building would be demolished, and that a few days later a large sign appeared on the building announcing demolition plans under the company's sponsorship.

"Neither then nor at any subsequent point had the city issued a certificate of eviction—a legal pre-requisite for demolition of occupied housing," he added.

A landlord can remove ten-

ants legally from a residential building by obtaining the eviction certificates from the city's Office of Rent Control. The certificates are issued after owners have shown that they have filed plans for the construction of an approved building on the site and have complied with certain procedures for relocating their tenants.

Mr. Lefkowitz said he would seek a court order against the two companies on July 19.

STATE OF LEFKOWITZ (Urban Relocation Co., Inc.) — Petitioner moves for an order granting leave to reargue the memorandum decision of the court dated Nov. 16, 1941. However, since the instant application to a great extent is based upon facts occurring subsequent to the determination the motion will be denied. As an application for reconsideration and to renew based upon new circumstances.

Petitioner moved, pursuant to section 63, subsection 12 of the Securities Law, for an order mandating respondent from conducting and engaging in certain business activities in violation of sections 501 and 502 of the Business Corporation Law and further for an order pursuant to CPLR 8303(a) awarding costs to petitioner.

This entire proceeding arises out of the alleged misuse of the name of the corporate name, Section 301(a)(1) of the Business Corporation Law, as amended, effective Sept. 1, 1961, in effect, prohibits the use by a "existing corporation of the name 'urban relocation.' Respondent was organized prior to the amendment prohibiting the use of such name and was granted permission to use the name 'urban relocation.' Section 301(a)(1) provides that under such circumstances that corporation shall obtain and legally state immediately following its name that it is 'not a governmental agency.'"

Petitioner contends that respondent has violated the statute by persistently displaying its name "urban relocation" without stating that it is not governmental agency and that in certain instances where such phrase was used it was not stated in a manner that was plainly visible.

Respondent's answer challenges the constitutionality of the statute which limit the use and manner in which respondent may display its corporate name. In addition, respondent strenuously asserted that its necessary steps were taken to comply with the fact there had been violations and full compliance in the past, and aware was amply prepared to respond to the government's allegations under cover of the editors' statement that there were no further violations.

by petitioner reveals that the presence of in several locations directly in the same without stating that it is a governmental agency.

[illegible]

Concededly, respondent was not aware of the captioned assignment. In this regard, it should be noted that respondent did not attempt to compare minutes of the 1932 meeting with the minutes of 1931. Therefore, failing action by the Attorney General, respondent nevertheless participated in carrying out the request that respondent was all its rights and interests. It is not a governmental act. The assignments now set forth that respondent is to comply with the instructions of the general board and management.

It is now evident that no action will not be made without prior consultation. The prime of the protection environment of the plateau then is, recently, the sections 391 and 392 of the 1970 Convention Law.

The defendant failed to request the
to the constitutionality of
301 and 332 of the Criminal Code.
tion Law lacks merit. In the
ler of Guenther Publishing Corp.
Lorenzo, 23 A. D. 2d 330.

At the outset, it should be noted that a presumption of constitutionality applies to acts of the Legislature. *Miller v. Board of Education*, 30 N. Y. 2d 214, 348 N.E.2d 1011, 37 A.D.2d 1002, 368 N.Y.S.2d 1002 (1975). The Court has consistently held that it is the Legislature's prerogative to determine the scope of public employment. *Miller v. Board of Education*, 30 N. Y. 2d 214, 348 N.E.2d 1011, 37 A.D.2d 1002, 368 N.Y.S.2d 1002 (1975). It is well established that the Legislature has a broad discretion to determine the scope of public employment. *Miller v. Board of Education*, 30 N. Y. 2d 214, 348 N.E.2d 1011, 37 A.D.2d 1002, 368 N.Y.S.2d 1002 (1975). The Legislature's power to regulate public employment is not subject to judicial review. *Miller v. Board of Education*, 30 N. Y. 2d 214, 348 N.E.2d 1011, 37 A.D.2d 1002, 368 N.Y.S.2d 1002 (1975). The Legislature's power to regulate public employment is not subject to judicial review. *Miller v. Board of Education*, 30 N. Y. 2d 214, 348 N.E.2d 1011, 37 A.D.2d 1002, 368 N.Y.S.2d 1002 (1975).

In this case, it is pointed out that the proclivities of a nation are not the right to the self-determination of its people, not being concerned to learn from them. What is the right here is the right to a more direct indication to the people of the Government is in no way concerned with the city, state or federal government, the immediacy and security of the relations which the Government has to be kept to really be a permanent in determining the relations of the people and hence the validity of the relative interests of a nation. As a result, the Government is not to be used to indicate to the people that the Government is not a permanent one, but a valid and effective one.

Accordingly, protection from creditors, and the right to sue from outside the corporation, are the chief reasons for the incorporation of a firm. The corporation is then a legal entity, distinct from the individuals who own it. It can sue and be sued, and its debts are its own, not the debts of the individuals who own it. The corporation is also a legal entity, distinct from the individuals who own it. It can sue and be sued, and its debts are its own, not the debts of the individuals who own it.

1 (5)
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
In the Matter
of

The Application of the PEOPLE OF THE STATE
OF NEW YORK by LOUIS J. LEFROWITZ,
Attorney General of the State of New York,

Petitioner,

AFFIDAVIT

For an order enjoining and restraining
URBAN RELOCATION CO., INC., CITIDEL
MANAGEMENT CO., INC., and SEYMOUR
SHAPIRO,

Index No.

Respondents,

Pursuant to Section 62, Subdivision 12 of
the Executive Law from carrying on, conduct-
ing and transacting their business in a
repeated and persistent fraudulent and
illegal manner.

-----X
STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

GREGORY STUART OLIVER, being duly sworn, deposes and
says:

I am an Investigator for the Department of Law of
the State of New York and I make this affidavit in support of
petitioner's application for judgment restraining respondents
from engaging in any course of conduct which interferes with
or disturbs the comfort, repose, peace or quiet of any tenant
in any housing accommodation under respondents management,
operation or control.

For the past several months I have been coordinating
an investigation into the business acts and practices of certain
management and relocation companies operating in the City and

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ATTORNEY-GENERAL AFFIDAVIT

State of New York. These companies are retained by property owners and site developers to manage and to relocate tenants from various buildings that are proposed for "gutting" and remodeling or demolition and replacement by new structures. The investigation was prompted by numerous complaints to the Attorney General from tenants in such buildings that the relocation companies, including respondent URBAN RELOCATION CO., INC., CITADEL MANAGEMENT CO., INC., (hereinafter "Urban/Citadel") were and are attempting to harass tenants into vacating their apartments.

In the course of this investigation the Attorney General's staff has interviewed more than one hundred tenants representing several dozen buildings at various locations in the Borough of Manhattan. I personally have inspected and photographed conditions in a large number of apartments, and I have examined official records of housing and rent control violations maintained by various City agencies.

Based on this investigation it is evident that respondents Urban/Citadel, together with its officers, agents and employees, have embarked on a conscious campaign to frighten and intimidate tenants for the purpose of forcing them to vacate their apartments involuntarily, as shown by the affidavits of tenants in support of this application, which are corroborated by numerous other affidavits obtained in the course of this investigation.

Once Urban/Citadel become involved with a building an all-too-familiar pattern of events begins. Heat and hot water service suddenly become erratic, it often disappears

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ATTORNEY-GENERAL AFFIDAVIT

entirely, particularly on weekends or holidays. Public halls and stairways are not cleaned on any regular basis. Quite often the former owner's superintendent is fired and replaced, if at all, by a person unable or unwilling to perform necessary tasks.

Building security becomes a problem under Urban/Citadel, since the locks on front and rear entrance doors are frequently and inexplicably broken and not repaired for lengthy periods of time; this gives easy access to intruders and scavengers, who often deface the walls, break into vacant apartments, urinate in hallways, and generally create a frightening atmosphere in the building.

Urban/Citadel agents do not adequately clean out vacant apartments, and food and garbage is deliberately left in them to attract rats and other vermin to the building.

Normal maintenance is ignored and plumbing leaks, falling plaster, cracked walls and the like are repaired, if at all, only after extensive complaints by tenants. When complaints are made, Urban/Citadel personnel are rude and abusive to tenants and frequently curse at them.

In some instances Urban/Citadel employees have actually threatened tenants that if they did not vacate quickly they might lose the relocation stipends that are required by law.

When tenants complain to various governmental agencies about their plight, Urban/Citadel will attempt to explain away the situation by blaming "the neighborhood crime problem" or "drug addicts" or labor problems, fuel shortages, equipment breakdowns, stolen supplies, unreliable repairmen, and just about every other plague except locusts.

ATTORNEY-GENERAL AFFIDAVIT

Annexed to the petition, and in further support thereof, are just a few of the affidavits given by tenants in Urban/Citadel buildings. These describe in detail the facts of every day lives in the chambers of horrors operated by Urban/Citadel. At trial petitioner will produce numerous witnesses who will testify to the horrendous conditions permitted and planned by respondents.

[While it is possible that each separate problem in Urban/Citadel buildings, in and of itself, might be explained, it is simply not possible to attribute the totality, similarity and frequency of all these problems to mere coincidence. I have personally visited several buildings, similar in age and size to Urban/Citadel buildings and on adjacent sites and blocks, and have interviewed superintendents and tenants therein, and nowhere have I seen any conditions even remotely comparable to those in the Urban/Citadel managed properties. Petitioner will show at trial that there is a common thread of design interwoven throughout Urban/Citadel's operations.]

[In addition, Urban/Citadel has employed another particularly obnoxious tactic to further harass tenants, that of malicious prosecution. On numerous occasions, Urban/Citadel has brought legal action against tenants for nonpayment of rents when in fact respondents knew all too well that those same rents had been paid. Urban/Citadel has the further audacity to sue, not for 1 month's rent, but in many cases for 1 year's rent, or more! In many cases the tenant has no checking account, having paid the rent with a bank money order. To prove his innocence, the tenant must request the bank to check its records for the purchase of twelve or more money orders, a time-consuming and humiliating process. When the date of court

ATTORNEY-GENERAL AFFIDAVIT

appearance arrives and the tenant is present, Urban/Citadel will frequently not answer the roll call. Sometimes tenants, particularly elderly ones who have health problems, will not appear in court. In such a case, Urban/Citadel will answer the call and a default judgment will be entered against the tenant. Those tenants who do appear are put to great inconvenience, whether they are working people, housewives, or retired people. And the courts, which are there for the purpose of protecting the rights of the innocent, are used as a tool by these despicable men to harass and frighten the innocent.

[In several of the buildings, respondents have permitted drug rehabilitation groups, unwed mothers, and welfare clients to use some of the apartments free of charge. While we must all sympathize with the plight of our less fortunate citizens and seek to encourage rehabilitation, it is quite clear that respondents have no such laudatory motives. Again, as with the courts, they are using Odyssey House, Catholic Charities, and other outstanding social agencies as a tool to frighten the tenants into vacating their apartments.]

Urban/Citadel has deliberately chosen to create a climate of fear and apprehension in the buildings under its control, a climate calculated to coerce tenants into vacating their apartments and to discourage them, particularly the elderly, the poor, and those unfamiliar with the English language, from attempting to assert their rights under applicable law and regulations. The only misfortune of these hapless tenants is to reside in a building that, in the eyes of the developer stands in the way of "progress". Respondents' illegal activities must be halted by this Court.

WHEREFORE, your deponent respectfully prays that
petitioner's application be granted.

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GREGORY HEART OLIVER

Subscribed and sworn to before me this
5th day of June, 1972.

[Signature]

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LOUIS J. LEFKOWITZ
ATTORNEY GENERAL
STATE OF NEW YORK

Urban Relocation, Inc.

30 CENTRE STREET
NEW YORK, NEW YORK 10013

July 11, 1972

Dear Dr. Denson-Gerber:

In response to your inquiry, please be advised that in an affidavit by Investigator Gregory Stuart Oliver, filed in Supreme Court of the State of New York, County of New York, in a proceeding entitled The People v. Urban Relocation Co., Inc. et al., he stated among other things as follows:

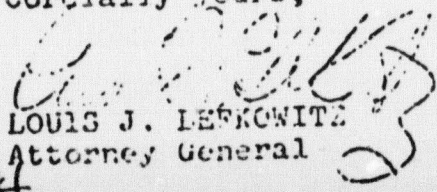
"In several of the buildings, respondents have permitted drug rehabilitation groups, unwed mothers, and welfare clients to use some of the apartments free of charge. While we must all sympathize with the plight of our less fortunate citizens and seek to encourage rehabilitation, it is quite clear that respondents have no such laudatory motives. Again, as with the courts, they are using Odyssey House, Catholic Charities, and other outstanding social agencies as a tool to frighten the tenants into vacating their apartments."

An investigation conducted by Investigator Oliver of this office led him to the conclusion that certain relocation companies attempted to force tenants to vacate their housing accommodations by placing addict rehabilitation and treatment facilities in occupied residential structures with the resultant disturbances that necessarily flow from such rehabilitation and treatment process.

The placing of Odyssey House Facilities in vacant buildings, where no residential tenant relocations are involved, is no part of our investigation and we can see no objection to same.

Best wishes.

Cordially yours,


LOUIS J. LEFKOWITZ
Attorney General

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From The Office Of:

Attorney General Louis J. Lefkowitz
80 Centre Street
New York City

NEWS RELEASE

RELEASE P.M. NEWSPAPERS
TUESDAY, FEBRUARY 20, 1973

LEFKOWITZ GETS JUDGMENT BARRING
HARASSMENT OF TENANTS BY URBAN RELOCATION COMPANY

Manhattan tenants pressured to vacate their apartments won a victory today when Attorney General Louis J. Lefkowitz announced that his office has obtained a judgment in Supreme Court, New York County, permanently restraining the Urban Relocation Company of 205 East 42 Street, New York City, from engaging in any acts of tenant harassment.

Attorney General Lefkowitz had brought suit against the company, which relocates tenants from buildings that are to be demolished for new structures, charging it with deliberately failing to make building repairs, discontinuing essential services such as heat and hot water, not providing adequate building security, removing locks, instituting fraudulent eviction proceedings against tenants, and other acts "calculated to force tenants into involuntarily vacating their housing accommodations."

Under the terms of the Supreme Court injunction, signed by Justice Abraham J. Sellenoff and entered on Urban's consent, the company is required to provide all essential building services such as heat, hot water and repairs, at all buildings under its control, must provide adequate security for its tenants, and may not engage in any course of conduct that interferes with or disturbs its tenants or is designed to force them into vacating their apartments involuntarily. Any violation of the judgment may result in Urban being held in contempt of court.

The company, although it did not admit to any wrongdoing, agreed to pay \$2000 in costs to the State.

The buildings involved include: 1265 Second Avenue, 1809 Second Avenue, 1557 Third Avenue, 210 & 214 East 19 Street, 117 East 57 Street, 55 East 65 Street, 250 East 67 Street, 150 East 49 Street, 156 East 49 Street, 201 to 229 East 52 Street, 1805 to 1813 Second Ave., 501 to 507 West 111 Street, 206 & 210 East 17 Street, 574 Third Ave., 201 East 87 Street, 236 East 94 Street, 500 to 508 West 112 Street, 165 East 49 Street, 210 to 246 East 53 Street, 959 & 867 Third Avenue, 200 & 206 East 88 Street, 336 East 53 Street, 239 to 247 East 93 Street.

Attorney General Lefkowitz said: "This judgment will benefit thousands of New York City tenants who have been victimized by illegal harassment. Urban is now under a court order to properly maintain all the buildings under its operation and to provide heat, hot water and other vital services."

The litigation was handled by Assistant Attorney General Thomas F. Harrison of the Environmental Protection Bureau. Attorney General Lefkowitz pointed out that a similar suit against Relocation Management Associates, another tenant relocation firm, is being readied for trial.

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DEPARTMENT OF BUILDINGS

MUNICIPAL BUILDING
NEW YORK 7, N. Y.

BRONX
1032 ARTHUR AVENUE
BRONX 67, N. Y.

BROOKLYN
MUNICIPAL BUILDING
BROOKLYN 1, N. Y.

QUEENS
120-83 QUEENS BLVD.
NEW GARDENS 12, L. I.

RICHMOND
BOROUGH HALL
ST. GEORGE 1, L. I.

226 East 53 St. Corp. | Urban Relocation Co. Inc.
Harry Meisner Bros. | Richard Brand
120 Cedar St. | 274 East 53 St.
N.Y.C. N.Y. | N.Y.C. N.Y.

You are hereby notified that there exists a violation of law in the subject premises as described below.

You are hereby directed to remove this violation forthwith, pursuant to Section 643a-9.0 of Chapter 26, of the Administrative Code.

566-2484

All inquiries and reference to this violation should be directed to the Violation Section in the respective borough.

John D. Deane

BOROUGH SUPERINTENDENT

COMMISSIONER

VIOLATION NO.	LOCATION	BORO.	DIST.	BLOCK	LOT	DATE FILED
1900-71	226 East 53 St.	Man	20	1326	37	3-27-71
NO. OF STORIES	CONSTRUCTION	OCCUPIED AT TIME OF INSPECTION AS				
6	H.F.P.	Multi-Unit Dwelling				

Section P26-129.1 of the Administrative Code violated.

Condition reported: Having erected and maintaining a unlawful sign
at the above premises.

Sign: approx. 4' x 8'

Worked: Building being vacated by
Urban Relocation Co. Inc.

205 E. 42 St.

Tel 689-9122

No renting of rooms, apartments, stores, or offices permitted.

A. D.

John D. Deane
Commissioner

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*P.L. 115 City A
for id. 5/29/74 g*

URBAN RELOCATION CO., INC.

205 EAST 42ND STREET
NEW YORK, N. Y. 10017

(212) 689-9122

February 11, 1971



Mr. Edwin Glickman
Wonn Properties Corp.
301 East 57th Street
New York, New York

Re: 873 - 875 Third Avenue

Dear Mr. Glickman:

We are herewith submitting our contract for the relocation or removal of all residential tenants from the above-mentioned premises.

We shall be permitted to spend up to \$2,000.00 to relocate each of these tenants. Should it become necessary to exceed this amount, we shall request prior approval before offer is made to tenant.

In the event that it becomes necessary to secure apartments to be held for tenants in accordance with the requirements of the City Rent and Rehabilitation Administration, we shall be authorized to pay on your behalf, rent for these apartments for the required time, which should be for a period of approximately one month, and in addition, we shall be authorized to pay on your behalf to the broker, a fee for holding said apartment, equal to one month's rent. These costs shall be in addition to the relocation costs referred to above.

Our fee shall be at the rate of \$500.00 per tenant, payable as each tenant vacates.

It is agreed that Urban Relocation Co., Inc. is hired at the agreed fee to make its services available and perform the services at the above premises, the controlling factor being that the owner receives possession of these tenant's apartments.

We shall be paid for services rendered after tenant has vacated his premises, regardless of the manner in which removal of these tenants occurs, in any lawful manner whatsoever.

It is expressly understood that the term "in any lawful manner whatsoever" in the above paragraph is not limited in any way except that the means must be lawful and includes the vacating of these apartments through such means as:

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eviction of tenants for non-payment of rent, eviction of squatters, death of tenants, tenant's voluntary and unsolicited removals and the owner or its agents, servants, or employees own voluntary efforts towards accomplishing the vacating of these apartments without excluding any other methods of removals of these tenants.

It is further understood and agreed that this agreement and the price set forth herein contemplates the relocation and removal of all residential tenants on the premises for the purpose of demolition.

We shall be retained to manage the existing building and shall be responsible for all duties of a managing agent. We shall submit monthly statements of income and disbursements. Management to be performed by Citadel Management Co., Inc. an affiliate of Urban Relocation Co., Inc.

We also agree to manage this property at the rate of 5% of the total rent collected with minimum of \$75.00 per building, per month.

This contract may be cancelled by the owner by giving Urban Relocation Co., Inc. five days notice in writing.

In the event of a cancellation based upon no fault of Urban Relocation Co., Inc. the owner will pay to Urban Relocation Co., Inc. \$125.00 for each residential tenant in request of which Urban Relocation Co., Inc. shall not have earned its \$500.00 fee, provided however, we shall be paid the full \$500.00 fee for all tenants who have vacated as well as those where agreements have been made between the owner, agent, attorney, or tenants to vacate.

In the event that legal action has been before the Rent and Rehabilitation Administration and specific apartments or rooms were held in accordance with their requirements, we shall be paid our relocation fee for securing these apartments or rooms during this termination period.

This contract shall become effective upon receipt of one signed copy of this agreement. Upon receipt of this signed copy, we shall proceed with the relocation and management program.

Very truly yours,

URBAN RELOCATION CO., INC.

Seaygur Shapiro
Seaygur Shapiro, Pres.

SS/cd

ACCEPTED:

A-198

DATE

Feb. 11, 1971

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P1 f1 = Ex. F
for id. 6/13/74 g.

<u>Space Occupied</u>	<u>PROPERTY #7</u>	<u>873-875 THIRD AVENUE</u>	<u>Monthly Rent</u>	<u>Lease Expiration</u>	<u>Possession Problem</u>
Entire Bldg Net Leased	Garfinkle		\$2,000. Net rent increases in 1973, 1980, 1984 to amounts equal appraised value of the land	1993	Yes

The following information as to the status of subleases is believed to be reliable

Store	Little Snacks	\$2,000. 2,291.66 2,700.00 2,791.66 2,833.33	8/31/71 8/31/78 8/31/84 8/31/89 4/29/95	Yes
Store	Ryans Liquor	Owned by Garfinkle - Net lessee of building		No
Store	Chinese Laundry	450.	8/31/71	No
Office	D & S Stampin	400.	5/31/69	No
Office	Virtue Associates	500.	10/31/71	No
Office	Park East Tours	1,000.	9/30/70	No
Office	Choice Messenger	325.	12/31/70	No
Office	Lawrence Productions	250.	12/31/70	No.
Office	Gerber	250.	6/30/70	No.
2 Apts.	Rathbone	500.	12/31/70	No.

*Piff. Co. B
for id. 5/29/74 gp.*

<u>Contract</u> <u>Date</u>	<u>Closing</u> <u>Date</u>	<u>Property</u>	<u>Nominee</u>
	3/4/70	859 Third Ave.	Vertland Realty Corp.
	4/1/70	861 Third Ave.	Marsan Properties, Inc.
	7/9/70	863 Third Ave.	Reba Associates, Inc.
	7/9/70	865 Third Ave.	Reba Associates, Inc.
	1/20/72	867 Third Ave.	Dorell Properties, Inc.
	10/27/70	869 Third Ave.	Linguist Realty Corp.
6/1/72 L.		871 Third Ave.	871 Third Avenue Corp.
	1/5/71	873-5 Third Ave.	Woas Properties Corp.
	3/15/68	207 E. 52 Street	207 East 52nd Corp.
	6/2/72	209 E. 52 Street	Lazman Development Corp.
	3/30/70	211 E. 52 Street	HMW Holding Corp.
	10/5/72	223 E. 52 Street	Wagstak Development Corp.
	1/30/70	229 E. 52 Street	JL 229 Corp.
	9/13/73	233 E. 52 Street	233 E. 52nd St. Corp.
	3/19/70	247 E. 52 Street	247 Associates, Inc.
	6/2/70	249 E. 52 Street	Sentimental Realty Corp.
	1/28/71	204-10 E. 53 Street	Portadown Corp.
	8/27/68	212 E. 53 Street	Wideningyre Properties Corp.
	5/1/70	214 E. 53 Street	768 Madison Corp.
	3/14/69	216 E. 53 Street	East 53rd Street Corporatio
	3/25/70	220 E. 53 Street	220 Associates, Inc.
	10/1/73	222 E. 53 Street	222 E. 53rd Corp.
	4/15/70	224 E. 53 Street	224 East 53rd St., Inc.
	12/30/69	226-8 E. 53 Street	HM 226 Corp.
	10/1/68	230 E. 53 Street	Silron Sales Corporation
9/2/69 L.		236-8 E. 53 Street	Eastford Investors, Inc.
	6/15/70	240 E. 53 Street	Zalkay Properties, Inc.
	10/15/70	246-8 E. 53 Street	Milfast Realty Corp.
	9/25/69	329 E. 52 Street	329 Holding Corp.
	9/25/69	243-5 E. 50 Street	Ramsan Properties Corp.
	11/13/69	957 Second Avenue	Rodisi Realty Corp.
4/17/73		229 & 241 E. 49 Street	Pith Equities, Inc.

L - Leasehold

28th - 1976-1978

NICKERSON, KRAMER, LOWENSTEIN, NESSEN, KAMIN & SOLL
919 THIRD AVENUE
NEW YORK, N. Y. 10022

(212) 688-1100

CABLE ADDRESS
NICKRAL
TWX NUMBER
710 581-5340

July 16, 1975

Bradley B. Davis, Esq.
1235 Park Avenue
New York, New York 10028

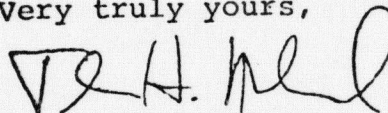
Re: Rathborne v. Citadel

Dear Mr. Davis:

As 303E.5 I am happy to provide you with the names of the partners of Madison Associates, based on information furnished me by Mr. Glickman's office. The partners are Kenneth and Lucille Gladstone, Marvin B. Tepper, Edwin J. Glickman and Arnold Rabinor. The address of Madison Associates is 301 East 57th Street, New York, New York 10022.
6-910 W. St. End

You told me over the telephone today that on receipt of this information you will withdraw your motion noticed for July 30. We would have been happy to provide this information about Madison Associates in the absence of a motion and thus I am sorry you went to the trouble of preparing your papers before we had a chance to talk.

Very truly yours,



Thomas H. Moreland

THM:lmk

Att'ys:
Harold P. Wamblyer

A-201



John V. Lindsay,
Mayor

Parks, Recreation and Cultural Affairs Administration

August Heckscher, Administrator,
Commissioner of Parks

Joseph P. Davidson,
First Deputy Administrator

The Arsenal • 830 Fifth Avenue • New York, New York 10021

Telephone: 360 -8151

August 7, 1972

Mr. Prescott Rathborne
200 East 50th Street
New York, New York 10021

Dear Mr. Rathborne:

In the course of this department's surveys, we have been literally amazed with your garden full of hundreds of different plant varieties, both native and exotic.

The very fact that such a fantastically varied garden thrives in this city's unfavorable environment, is truly a testimony to your horticultural knowledge and achievement.

Your garden is especially noteworthy as it encompasses great natural expression. Your use of many different kinds of flowers such as annuals, biennials, perennials, and bulbs is but one aspect of natural expression. Your garden also includes a great variety of shrubs, both deciduous and evergreen; as well as, many flowering trees, evergreen and deciduous trees.

It is certainly in order to compliment you upon your aesthetic and ecological contribution. Your exceptional garden is in actuality the antithesis to the cold, unnatural cityscape.

In closing, Our Department would like to thank you for creating this beautiful natural oasis, which not only is pleasing to the senses, but also, very practically, helps in the battle against pollution through its natural processes.

If, we can be of further assistance to you in your horticultural endeavors, please call on us in this office.

RECEIVED AUG 07 1972

CC: Mr. Joseph F. Melston
Street Tree Planting
Coordinator Manhattan

IR/dr.
8/7/72

Most Sincerely,

Dorrie S. Rosenblatt

Dorrie S. Rosenblatt
Assistant Street Tree
Planting Coordinator

A-202

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BEST COPY AVAILABLE

PRESCOTT H. RATHBORNE,

Plaintiff,

-against-

75 Civ. 2392

CITADEL MANAGEMENT CO., INC., URBAN
RELOCATION CO., INC., EDWIN J. GLICKMAN,
SABIAN REALTY CO., INC., SULTAN
DEVELOPMENT CORP., LOTS PROPERTIES CORP.,
and MADISON ASSOCIATES,

AFFIDAVIT IN OPPOSITION

Defendants.

State of Louisiana)
Parish of) ss:

PRESCOTT H. RATHBORNE, being duly sworn, deposes and says:

I am the Plaintiff in the within action and as such, am fully familiar with the facts hereinafter set forth. I make this affidavit in opposition to Defendants' motions for summary judgment. I have read the accompanying Affidavit of Bradley L. Davis, my attorney, and, except for those matters of law where I have no knowledge, I adopt everything that he has said as my own position. I unequivocally state that block substantially deteriorated between 1970 and 1972 as a result of the action of these defendants, and that, as Judge Solomon stated, this deterioration was a prime cause of my leaving the neighborhood. If there is any testimony of mine recorded to the contrary, then that testimony has been inaccurately recorded.

Of course, I was also extremely disturbed by the vindictive acts of my immediate landlord which were the subject of my prior action. However, those have nothing to do with the case at bar. Even had my relationship with my immediate landlord been perfect, the collapse of the community intentionally engineered by the Defendants had made my life so miserable that I could not have

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RATHBORNE OPPOSITION AFFIDAVIT

continued to live in my apartment. My immediate landlord had nothing to do with abandoning buildings, bringing drug addicts to the community, tinning windows and creating a general atmosphere of fear and imminent destruction on the block. I may not have had conversations with the within defendants, but to say I had no contact with them is absurd. Urban and Citadel, in particular, were extremely real presences on the block after 1970. They had a store front a few doors from where I lived and posted their hideous signs all over. For Mr. Glickman to claim that he did not know what was happening until he received my November 1972 letter is utterly ridiculous: Not only were there scores of newspaper articles not to mention government investigations about the situation, but Mr. Glickman himself participated in radio debates with members of the East Fifties Association about conditions on the block. The veracity of his entire affidavit should be considered in light of his obviously contrary-to-fact position taken on this point.

I know that a stipulation was entered into in a prior action which bars me from examining certain of the within defendants about matters relevant to that case, and I have instructed my attorney to abide by the terms of that stipulation. However, I never understood that that stipulation would bar me from questioning any entity in which Mr. Glickman ever had any interest, or would bar me from examining with regard to matters not related to the case in which the stipulation was entered.

Because of the actions of these defendants, I, as well as scores of other people on the block, suffered extreme financial and personal damage. These developers did not even attempt to erect any new structures after they destroyed our lives and forced us out of our homes so they cannot argue that their acts benefited the city. All that they succeeded in doing was destroying sound housing and a good community.

I hope through this action not only to be compensated for the great losses I suffered but to establish for the other tenants in other communities

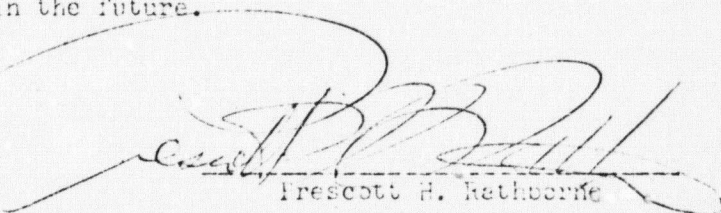
RATHBORNE OPPOSITION AFFIDAVIT

that these depredators cannot destroy neighborhoods with impunity. I understand from my attorney that this is what my complaint demands. However, if for any technical reason my present complaint does not state this, I ask the court to allow me to file an amended complaint rather than denying me any right to relief for the vast destruction I suffered.

For all of the above reasons as well as those set forth in the accompanying affidavits of my attorney and former neighbors and the exhibits annexed thereto, I respectfully pray that Defendants' motion be denied so that a jury of my peers may determine whether the acts I allege these defendants committed actually occurred, and, if so, how I should be compensated, and what further relief should be granted to protect innocent persons living on other blocks in which these depredators take an interest from suffering similar destruction in the future.

Sworn to before me this:

day of August, 1976.


Prescott H. Rathborne

No. 6070

State of Louisiana
Civil District Court
for the
Parish of Orleans

I, RICHARD J. GANUCHEAU, Clerk of the Civil District Court for the Parish of Orleans, State of Louisiana, the same being a Court of Record, having probate Jurisdiction, DO HEREBY CERTIFY, that

A. J. Fortier

Whose name is subscribed to the certificate of proof, acknowledgment, or affidavit of the annexed instrument, and thereon written, was at the time of taking such proof, acknowledgment or affidavit a Notary Public within and for said Parish, residing in said Parish, duly appointed, commissioned and sworn, and authorized by the laws of said State to administer oaths, and to take the acknowledgments and proofs of deeds or conveyances of lands, tenements and hereditaments, in said State, and other instruments to be recorded therein and to certify the same; that full faith and credit are and ought to be given to his official acts; and I further certify that I have compared the signature to the original certificate with that deposited in this office by such person and verily believe that the signature to the attached certificate is his genuine signature, and the person signing such certificate is not required by law to file in this office an impression of his official seal.

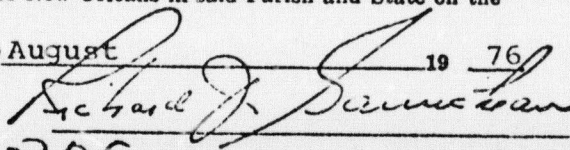
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of New Orleans in said Parish and State on the

23rd

day of August

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Clerk.

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SHAPIRO REPLY AFFIDAVIT

Seymour Shapiro, being duly sworn, deposes and says:

I am the President of defendants Citadel Management Co., Inc. (hereinafter referred to as "Citadel"), and Urban Relocation Co., Inc. (hereinafter referred to as "Urban").

This affidavit is submitted in reply to the opposition of plaintiff to this motion for summary judgment and in further support of the motion.

Although I am informed by counsel that plaintiff's allegations that Citadel and Urban were engaged in harassment against residents on the block of East 53rd Street, New York, New York, between Third and Second Avenues are irrelevant to the issues of this case. I nevertheless cannot permit those untrue claims to go unanswered. Neither Urban nor Citadel have engaged in any acts of harassment against tenants, including plaintiff, and no facts to the contrary have been submitted. We have been in business for over twenty (20) years and our clients include some of the finest and most respected firms and institutions in the country. Following is a list of some of the institutions and businesses for which we have acted as agents:

Park Avenue Synagogue
First National City Bank
New York Bank for Savings
Roosevelt Hospital
Columbus Hospital
St. Georges Ukrainian Catholic Church
New York University
Mormon Church
New York Telephone Company
Morningside House (Cathedral of St. John The Divine)
Starett Bros. & Eken
Tishman Realty & Construction Co.
American Home Products
Leham Bros.
Helmsley-Spear
Arlan Properties.

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Citadel and Urban have been the largest relocation-management firms involved in urban renewal in New York City for many years and have successfully aided many thousands of relocations.

Plaintiff was apparently a tenant in 200 East 53rd Street. That building was covered by a long-term net lease held by a corporation controlled by a Mr. Sol Garfinkel, (Exhibit L to plaintiff's attorney's affidavit in opposition to this motion.) The term of that lease does not expire until 1993. Neither the corporate lessee nor Mr. Garfinkel had any connection whatsoever with either Urban or Citadel. Citadel, as the agent for the owner of the building, collected a monthly rent check from Garfinkel for the entire building. Urban made no attempts at relocation in that building and Citadel had no active management duties. As a matter of fact, there has never been any agreement between Urban and Citadel, or to my knowledge the other defendants, and Garfinkel or his corporation, for the vacating of that building and the acquisition of his leasehold. Soon after plaintiff vacated his apartment, Garfinkel re-rented it.

Neither Urban or Citadel had any contact with the plaintiff. No complaints were received from him, until after he vacated. Urban and Citadel maintained offices on the block and if plaintiff felt he was being harassed or bothered by any of our employees or agents, he could very easily have contacted us.

Plaintiff has submitted a photocopy of an affidavit by Gregory Oliver, an investigator with New York State Attorney General's Office (Exhibit F to plaintiff's papers in opposition.) He seems to rely heavily upon this document. That affidavit is irrelevant and of no probative value in this action:

SHAPIRO REPLY AFFIDAVIT

(a) the affidavit does not even claim that the block on which plaintiff resided was involved in the actions alleged therein, no less is there any allegation that plaintiff's rights have been interfered with;

(b) the affidavit was submitted in support of a Petition and an accompanying application for a temporary injunction --- the injunction requested by the Attorney General was denied;

(c) the proceedings were settled by entry of a Consent Judgment (a copy of which is annexed hereto as Exhibit I) which specifically provides at p.2 thereof:

"ORDERED, ADJUDGED AND DECREED that this consent judgment shall not be construed as, or be deemed to be, evidence of or an admission by any of the respondents of any liability or wrong doing of any nature whatsoever as set forth in the Petition ...";

(d) although Mr. Oliver's affidavit discusses the use of unspecified premises for drug rehabilitation centers and to house unwed mothers, the judgment in the proceeding does not prohibit such use. In any event the facilities supplied to Odyssey House were for the purposes of housing and office space only. That use of that space was approved by the New York Attorney General's office. The approval was obtained by the president of Odyssey House, Judianne Densen-Gerber, J.D., M.D. The buildings loaned to Odyssey House were fully vacant before the agency started using them. Odyssey House went into occupancy

SHAPIRO REPLY AFFIDAVIT

upon the understanding that it would vacate the buildings whenever asked to do so; its use was on a temporary basis and no rent was charged or paid.

Our attorneys inform me that plaintiff does not state a cause of action and has not raised any facts, as opposed to allegations, to defeat this motion. These defendants had no duty toward plaintiff, and plaintiff had no right which were interfered with by them. No actionable wrong was committed.

WHEREFORE, it is respectfully requested that the motion be granted.

Seymour Shapiro

Sworn to before me this
day of September, 1976.

MORBLAND REPLY AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Thomas H. Moreland, being duly sworn, deposes and says:

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2. To the very limited extent that plaintiff's affidavits and exhibits are in sufficient form to be considered on this motion (see pp. 5-11, infra), they do not rebut the showing made in our motion papers warranting summary judgment. Although plaintiff has thought of new labels for his alleged tort -- now variously described as nuisance, conspiracy, statutory harassment or prima facie tort -- he has not come forward with any competent evidentiary support for his baseless allegations.

3. Plaintiff, a former statutory tenant in a building owned by the Madison defendants, alleged in his amended complaint that he was forced to vacate his apartment because of various acts allegedly undertaken by defendants in the course of preparing to redevelop the block on which plaintiff lived. In our motion papers we demonstrated, principally through the sworn affidavit of defendant Glickman and the discovery taken during the course of plaintiff's prior action in this court ("Rathborne I"), that there was no truth to most of the complaint's allegations. Further, we showed there was "no tort" in the activities that defendants did take in the course of their assemblage, and of which plaintiff had never complained to the defendants: posting signs indicating that various buildings on the block -- but not plaintiff's -- were being vacated; tinning up certain of the buildings on the block -- but not plaintiff's -- that had been vacated; and affording occupancy in certain of the buildings in

MORLAND REPLY AFFIDAVIT

the block -- but not plaintiff's -- to Odyssey House, the widely admired drug rehabilitation program.

4. Plaintiff has confirmed the showing made in our motion papers that the defendants took no action at all -- good, bad or indifferent -- toward plaintiff, and that plaintiff never made any complaint to the to defendants, by admitting these two paragraphs of the General Rule 9(g) Statement submitted by the Madison defendants:

"5. Throughout plaintiff's tenancy in the building, the building was subject to a net lease running to 1993 under which the lessee was 873 Third Avenue Corp. ("873 Corp."), an entity unrelated to the Madison defendants. Further, the first floor of the building was subject to a commercial lease running to 1993 under which the lessee was Munchtime, U.S.A., Inc. ("Munchtime"), also unrelated to these defendants. Throughout his tenancy plaintiff paid his rent, and looked for maintenance and repair of the building, solely to 873 Corp. and not to the Madison defendants."

* * *

"7. Throughout his tenancy in the building, plaintiff had no contact or communication with any of the defendants, including Citadel Management Co., Inc. ("Citadel"), and Urban Relocation Co., Inc. ("Urban"), except for one meeting with defendant Glickman on September 7, 1972. At that meeting, plaintiff did not protest or even mention any of the matters which are claimed in the amended complaint to have "constituted harassment of plaintiff by defendants (§ 10)."

5. The return date of our motion -- and the similar motion of defendants Citadel and Urban -- was adjourned several times at plaintiff's request. As a result plaintiff had almost one year -- from service of our papers on October 22, 1975, to the ultimate return of the motion on September 8, 1976 -- to procure competent evidentiary materials to support the allegations of his complaint and rebut the showing made by the Madison defen-

MORGLAND REPLY AFFIDAVIT

dants in their moving papers. This was his burden under Rule 56(e) (Reply memorandum of Madison defendants -- "Reply mem." -- pp. 8-11). It is a burden he has wholly failed to meet.

6. Instead, plaintiff asks the court to disregard the Rathborne I material submitted in support of the Madison defendants' motion, submits wholly inadmissible materials in the attempt to create bogus fact issues, and then asks for permission to conduct more discovery from the Madison defendants, without any showing of what remains to be discovered after the "full discovery" that ~~plaintiff~~ the Rathborne I action. (See Aff. of Thomas H. Moreland, October 22, 1975 -- "Moreland aff." -- ¶¶ 13-16). Plaintiff's three-pronged attempt to evade Rule 56 and the terms of his own stipulation must be rejected.

~~***~~
Plaintiff has made no proper
evidentiary showing as required
by Rule 56(e)

8. In contrast to the proper showing made by the Madison defendants, plaintiff has wholly failed to produce, as required by Rule 56(e), "facts as would be admissible in evidence" (see Reply Mem., pp. 8-11). We will review the inadmissibility, the incompetence, and the misleading nature of plaintiff's papers under the heading of the various acts which the Madison defendants are accused of having undertaken or caused.

*Although he denies most of defendants' other Statement 9(g) paragraphs, plaintiff in his opposing papers sets forth no evidentiary basis for these denials.

*Plaintiff's other technical and invalid objections to use of the Rathborne I materials are refuted in our accompanying Reply Memorandum at pp. 5-7.

MORGANLAND REPLY AFFIDAVIT

--the posting of signs

9. Plaintiff attempts to bolster his showing of the wrongful nature of the signs posted by defendants Citadel and Urban by citing

(i) a Supreme Court decision rendered against Urban in a proceeding brought by the Attorney General and finding that the wording of the signs was improper (Plaintiff's Exh. F, last page); and

(ii) a copy of a building violation issued on the ground that one of the signs was "unlawful" (Plaintiff's Ex. I).

10. Plaintiff fails to note, with respect to these exhibits, that (i) the lower court decision was unanimously reversed by the case cited in the Madison defendants' moving Memorandum of Law ("Mem ") at pages 22-23; and (ii) the building violation was found invalid on the merits after a trial, as one of plaintiff's own other exhibits shows (Plaintiff's Exh. M).

--the tinning of vacant buildings

11. Plaintiff really has nothing to add here, except a most peculiar citation of authority. As support for his motion that the application of tin to seal vacant buildings, in compliance with the Administrative Code (see Mem., p. 23), created a nuisance as to plaintiff, plaintiff cites a case holding that the failure to seal a vacant building, or otherwise comply with the very same section of the Administrative Code, constituted the maintenance of a nuisance (see Reply Mem., pp. 21-22). Puritan Holding Co. v. Holloschitz, 82 Misc.2d 905 (Sup. Ct. N.Y. Co. (1975)). We thank plaintiff for his citation.

MORELAND REPLY AFFIDAVIT

--the placement of Odyssey House facilities on the block.

12. Here plaintiff is guilty, whether intentionally or not, of a most misleading series of exhibits, all inadmissible of course. He attaches an exhibit by an investigator for the Attorney General's Office, submitted in a proceeding against Urban and Citadel, which alleges in part that one device used by these companies to harass tenants into vacating their apartments is the placement of "drug rehabilitation groups" such as Odyssey House in the buildings (Plaintiff's Exh. F, p. 5). But plaintiff avoids calling the Court's attention to the following facts:

- neither the affidavit itself, nor the several affidavits of tenants attached to it but not included in plaintiff's exhibits, make reference to the block in question;
- the Attorney General's application for preliminary injunction against Urban and Citadel was denied;
- the consent order ultimately agreed to by Urban and Citadel, without any admission of guilt on their part (much less on the part of the Madison defendants), and not attached to plaintiff's papers, makes no reference to the Odyssey House allegation in the affidavit nor any reference to buildings on the block.*

13. As Mr. Glickman points out in his accompanying affidavit, he initially did think that the Attorney General's Odyssey House allegations might relate to the block in question, and was moved to write a strong letter to Odyssey House (Plaintiff's Exh. G, last two pages), advising that the Madison defendants would have to ask Odyssey House to leave its buildings

*Unaccountability, the "news release" of the Attorney General's Office (Plaintiff's Exh. F, p. 7) does refer to a few buildings on the block, which only shows the virtue of the rule making such press releases incompetent evidence.

MORELAND REPLY AFFIDAVIT

because of the damage the allegations -- even though totally untrue -- would cause to the Madison defendants' relations with community groups and others. As he further points out, this action proved to be unnecessary when the Attorney General clarified the allegations as not applying to situations, such as those on the block, where Odyssey House was placed in entirely vacant buildings rather than in "occupied residential structures" (Plaintiff's Exh. G, first two pages). With this clarification, Odyssey House was permitted to remain on the block without further incident (Glickman reply aff., ¶¶ 3-6). As we point out in our reply memorandum, any claim that the mere placement of the Odyssey House facilities on the block created a public or private nuisance, without reference to the manner in which Odyssey House operated its facilities, would be improper under New York law (Reply Mem., pp. 22-25).

--the operations of Odyssey House
facilities on the block

14. Plaintiff cites a case standing for the proposition that a drug rehabilitation treatment center can be operated in such an obnoxious manner as to constitute a nuisance. People v. HST Meth., Inc., 43 A.D.2d 932 (1st Dep't 1974). But the same decision noted that other drug rehabilitation clinics in the same area -- an area at least as fashionable as plaintiff's block -- "were operating without major difficulties or complaints of any consequence" (Id., 43 App.Div.2d at 933). Thus, whether or not Odyssey House constituted a nuisance on the block depended upon the manner in which it operated its facilities. Here plaintiff has again totally failed to produce evidentiary

MORELAND RESOLV AFFIDAVIT

facts challenging the showing of the Madison defendants, based on Mr. Glickman's affidavit and the deposition of Odyssey House conducted by plaintiff in Rathborne I, that the operation of the Odyssey House facilities on the block was exemplary (Moreland aff., ¶¶ 63-68). In our memorandum, we showed that plaintiff's failure to notify the Madison defendants of any complaints he had about the operations of Odyssey House, and thus to give them a chance to take corrective action -- as Mr. Glickman showed he was more than willing to do in response to the Attorney General's allegations -- barred him from now seeking damages by reason of those operations (Mem., pp. 27-29). That principle is fully applicable to the new labels plaintiff now seeks to apply to his alleged tort (Reply Mem., pp. 28-30).

14. Plaintiff produces no new evidentiary facts challenging Odyssey House's method of operations. The only relevant reference to such allegations, contained in an inadmissible letter from another tenant on the block (Plaintiff's Exh. Mc), concerns a supposed instance of the piling up of garbage outside of Odyssey House buildings located on 52nd Street, not on 53rd Street on which plaintiff resided.

--harassment

16. In his attempt to breath life into his allegations that the defendants harrassed other tenants on the block -- not a wrong actionable by plaintiff in any event (Mem., p. 18) -- plaintiff submits only a collection of highly political, and totally inadmissible, magazine articles, news clippings, press releases and correspondence (Plaintiff's Exhs. A, B, C, D, F and Mc). All

MORLAND REPLY AFFIDAVIT

of this incompetent material must be totally ignored on the present motion (Reply Mem., pp. 8-13). There is, in the remaining papers submitted by plaintiff, not one shred of admissible evidence of any conduct by any of the defendants in "refusing to maintain properties on the block," or "threatening tenants who refused to vacate with physical and financial injury" (Amended complaint, ¶8), or of any other acts against any tenants on the block. Notably, the one affidavit submitted by a tenant who claims to have resided in a building owned by defendants makes no claim of any such specific acts of harassment (Aff. of Betty Butterworth, June 17, 1976).

--general deterioration
of the block

17. Plaintiff's papers are full of argumentive and conclusory statements that the Madison defendants' assemblage caused a general deterioration of conditions on the block in which plaintiff lived. But when the specifics of these allegations are examined, they prove to be nothing but groundless speculation with no evidentiary basis for concluding that the specific social and physical ills alleged were caused by anything the Madison defendants, or Odyssey House, did.

18. We are told -- inconsistently with the statements that the defendants tinned up vacant buildings or that Odyssey House used them, -- that on the block "buildings were abandoned and left to decay, becoming ... havens for derelicts and addicts" (Davis aff., p. 4). The authority for this proposition is a letter, inadmissible of course, written by the director of Odyssey House which says quite the opposite:

MORELAND REPLY AFFIDAVIT

"It is ... fortunate for the neighborhood that Odyssey House occupies these [otherwise vacant] buildings, for it is common knowledge that abandoned buildings are havens for addicts and destitutes" (Plaintiff's Exh. S, p. 2).

19. We are told that "mysterious fires" occurred in the block in January 1971 -- none on buildings close to plaintiff's -- (Davis aff., p. 4), but no attempt is even made to establish the defendants' responsibility for any such fires. We are told that "male prostitutes" frequented the block (Aff. of Paul Brine, July 12, 1976), but on what rational basis can defendants be charged with this social ill (see Plaintiff's Exh. S)*?

20. We are told that active drug users and addicts came to frequent the block (Davis aff., p. 4), but any attempts to attribute this to Odyssey House is totally unsupported by evidence. The only competent evidence is that Odyssey House regularly tested its program participants for drug use and found none, and that there was a methadone clinic which active drug users did patronize located in a building, not owned by the Madison defendants, across the street from plaintiff's building (see Moreland aff., ¶¶ 66-67, and Plaintiff's Exh. S).

21. Thus the attempt to attribute every social and physical ill of New York City, insofar as it affected East 53rd Street, to the assemblage of the Madison defendants must be rejected as an exercise in speculative innuendo. A reasonable jury could not return a verdict against the defendants on the basis of plaintiff's supposed proof, which would not be competent to reach the jury in the first place.

MORRISLAND REPLY AFFIDAVIT

Plaintiff has created no genuine issue of fact concerning his inflammatory allegations about the block, even assuming that general conditions in the block could ever be an actionable wrong to plaintiff personally. To be sure there is some inevitable and minor change in the physical appearance of a block as it is prepared for redevelopment -- here the tinning of buildings and the signs of Urban and Citadel. But the adjectives of counsel cannot convert these minor and inevitable consequences of living in a fast changing city into a malicious or otherwise actionable tort.

Plaintiff cannot establish
any actionable tort.

22. Thus, after sifting through plaintiff's papers we come back to the same four proper activities of defendants that we asserted in our moving papers were the sole provable allegations of plaintiff's complaint: the refusal to re-rent vacant apartments and the tinning of vacant buildings; the maintenance of the Urban and Citadel signs; and the provision of facilities for Odyssey House. In our moving memorandum we showed how these activities could not be held an actionable tort, especially the tort of "harrassment" specified in plaintiff's complaint (Amended Complaint, ¶10; Mem., pp. 13-37), and that plaintiff's sole remedy for any such improper conduct was the administrative proceeding specifically made available to rent control tenants (Mem., pp 38-50). The latter point remains valid because the substance of the alleged wrongs has not changed, merely the labels that plaintiff attaches to them (Reply Mem.,

MORELAND REPLY AFFIDAVIT

pp. 15-17). And, as our Reply Memorandum further shows, even if the statutory remedy not be deemed exclusive, plaintiff's new labels of nuisance, conspiracy and prima facie tort are inapposite to the facts as established by defendants in their moving papers and not challenged by any competent evidence in plaintiff's papers (Reply Mem., pp. 18-34).

Time for Judgment

23. Incredibly, plaintiff and his counsel still appear to believe that all they need do at this stage is show they have alleged facts which if proven would constitute a cause of action (Davis aff., p. 37; Plaintiff's brief, p. 6). But as Rule 56(e) makes clear, the time for bare allegations long has passed and the time for proof has arrived (see Mem., p. 32, 37; Reply Mem., pp. 8-13). Plaintiff has had even an excessive opportunity, in view of the repeated adjournments of this motion, to come forward with competent evidence to support his allegations. He has not and the case is ripe for judgment. Plaintiff has raised no genuine issue of any material fact, and on the undisputed facts defendants are entitled to judgment as a matter of law.

*** Conclusion

For the reasons stated above, the Court is respectfully requested to grant the Madison defendants summary judgment, or, in the alternative, to grant the Madison defendants a protective order against further repetitious discovery.

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TH H. Moreland

Thomas H. Moreland

GLICKMAN REPLY AFFIDAVIT

3. Plaintiff attaches to its papers as part of (Exhibit "F") a 1972 affidavit by a Mr. Oliver of the Attorney General's Office submitted in a proceeding brought against defendants Urban and Citadel. In the course of describing what he views as improper tactics used by Urban and Citadel to encourage tenants to vacate apartments, Mr. Oliver states as follows:

"In several of the buildings, respondents have permitted drug rehabilitation groups, unwed mothers, and welfare clients to use some of the apartments free of charge. While we must all sympathize with the plight of our less fortunate citizens and seek to encourage rehabilitation, it is quite clear that respondents have no such laudatory motives. Again, as with the courts, they are using Odyssey House, Catholic Charities, and other outstanding social agencies as a tool to frighten the tenants into vacating their apartments."

4. I was greatly disturbed at Mr. Oliver's allegations to the extent they could be read as extending to our provision of space to Odyssey House in the one assemblage in which we were involved. I was particularly concerned that these allegations might undermine our generally favorable relationships with community groups, which we had worked hard to develop after some initial "bad press" relating to our assemblage (see Exhibits "A" through "C" attached to plaintiff's papers). Accordingly, I wrote a letter dated July 7, to Dr. Densen-Gerber, President of Odyssey House, advising that it appeared we would have to ask Odyssey House to leave the buildings it occupied because of the potential damage to our reputation from these charges, even though they were completely untrue with respect to our assemblage (plaintiff's Exhibit "G").

GLICKMAN REPLY AFFIDAVIT

5. Fortunately, the matter was cleared up almost immediately. Dr. Densen-Gerber contacted Attorney General Lefkowitz, and he responded in a letter dated July 11, which plaintiff attaches to his papers but the significance of which he completely misses (Exhibit "G"). The Attorney General explained that Mr. Oliver's allegation related only to the placement of rehabilitation programs "in occupied residential structures." He further stated as follows:

"The placing of Odyssey House facilities in vacant buildings, where no residential tenants' relocations are involved, is no part of our investigation and we can see no objection to same" (Plaintiff's Exhibit "G").

6. The Attorney General's letter cleared Odyssey House, and also ourselves, of any allegations concerning our assemblage because we had made available to Odyssey House only buildings that had been completely vacated, or, in a few instances, buildings in which the one or two remaining tenants had expressly agreed to Odyssey House's presence. With this clarification we were able to allow Odyssey House to continue in occupancy, and it did so, without incident, for several more years.

7. My response to the Attorney General's allegations does show that we were sensitive to any criticism concerning the presence of Odyssey House on the block -- indeed perhaps oversensitive in that instance. We could have and would have taken prompt corrective action, as I pointed out in my first affidavit, had plaintiff ever complained to us about any improper behavior or activity affecting him relating to the presence of Odyssey House

GLICKMAN REPLY AFFIDAVIT

facilities on the block. He never complained, including during his one in-person meeting with me, and thus we had no reason to believe that he viewed the presence of Odyssey House negatively, much less that he thought it was a nuisance entitling him to sue for inflated damage awards.

8. I was honored to receive Odyssey House's "New York Service Award" at its annual dinner in March 1976. My involvement with Odyssey House has continued long after our redevelopment plans for the block had to be deferred due to changing market conditions. I urge the Court not to further dignify these attacks on Odyssey House and on the Madison defendants concerning

9. With respect to our motion, in the alternative, for a protective order against the conduct in this action of discovery repetitious to the discovery conducted in plaintiff's previous action, I need but comment briefly. Plaintiff claims he needs to depose someone from Madison Associates "with knowledge of the facts" pertinent to his allegations, and says that I will be "acceptable" if I am a person with such knowledge (Plaintiff's brief, p. 30). But as I stated in my moving affidavit, I am the only partner of Madison Associates with knowledge of the facts concerning the complaint since I was the person in active charge of the assemblage for the Madison defendants. It was I who dealt with Citadel and Urban, I who made space available for Odyssey House and I who met with plaintiff on the one occasion he contacted us. Thus, plaintiff's request for further discovery amounts to nothing more than a request that he again be allowed to depose me, although he had a full deposition in his prior action. I ask the Court not to countenance this repetitious discovery, and this violation of the terms of the stipulation upon which we agreed to allow plaintiff to discontinue his prior action against us "without prejudice."

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRESCOTT H. RATHBORNE,

Plaintiff,

-against-

COMPLAINT

CITADEL MANAGEMENT CO., INC.,
URBAN RELOCATION CO., INC.,
EDWIN J. GLICKMAN and SALBIAN
REALTY CO., INC.

Defendants.

Plaintiff, for his complaint, by BRADLEY B. DAVIS,
his attorney, alleges as follows:

1. Jurisdiction is founded on diversity of citizenship. Plaintiff is a citizen of Louisiana. Upon information and belief, defendant Glickman is a citizen of New York State and the other defendants are New York corporations with their principal places of business in New York State.
2. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00
3. Venue lies within the jurisdiction of the United States District Court for the Southern District of New York because all of the defendants have their offices and principal places of business within said district.
4. From 1965 through November, 1972, plaintiff was a tenant in a rent-controlled apartment at 200 East 53rd Street in Manhattan.
5. At some time prior to 1970, defendant Edwin J. Glickman decided to assemble the property on the block extending from 52nd Street to 53rd Street and Second Avenue to Third Avenue,

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COMPLAINT BEFORE AMENDMENT

Manhattan, in order to construct a multi-purpose office and residential complex.

6. In order to erect said complex, defendant Edwin J. Glickman had to demolish the existing structures on said block. These structures included the building in which plaintiff then resided.

7. In order to demolish said structures, defendant Glickman had to cause their tenants to move therefrom.

8. In furtherance of the above, defendant Glickman conspired with the other named defendants and others unknown to plaintiff to cause the tenants on the block to vacate their premises by improper and illegal means. These means included tinning and bricking up buildings and windows to give the block an abandoned appearance; posting large and ungainly signs indicating that the block was being vacated; renting or giving a large number of buildings to drug rehabilitations centers (although the area never had been a center of drug addiction) in order to bring unsavory persons to the neighborhood; refusing to re-rent vacated apartments or stores so that the neighborhood took on a derelict character, and, to the same end, refusing to maintain properties on the block; threatening tenants who refused to vacate with physical and financial injury; and other and diverse improper and illegal means.

9. By reason of all of the above, the block eventually became so derelict that it was uninhabitable and plaintiff was forced to vacate his apartment in November of 1972.

10. All of the acts above, moreover, constituted harassment of plaintiff by the defendants.

11. By being forced to so vacate his apartment, plaintiff suffered damages in the sum of \$200,000 for loss of permanent improvements; \$100,000 for loss of value of rent-controlled apartment; \$50,000 in other expenses, including legal fees, moving expenses and

COMPLAINT BEFORE AMENDMENT

protective devices required due to changed character of block; and \$100,000 in psychological damages.

AS AND FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT GLICKMAN

12. Plaintiff repeats reiterates each and every allegation contained in paragraphs 1 through 11 herein.

13. All of the acts hereinabove alleged were brought about through the willful wrong of defendant Glickman in undertaking procedures which were intended to cause tenants to illegally vacate premises occupied by them on the block he wanted to assemble.

WHEREFORE, plaintiff demands judgment against defendants in the sum of \$450,000; and in addition punitive damages against defendant Glickman in the sum of \$1,000,000 and against defendants Citadel Management and Urban Relocation (who have undertaken numerous efforts throughout New York City to cause tenants to illegally vacate premises) in the sum of \$5,000,000, together with interest and costs.

Plaintiff demands trial by jury.


BRADLEY B. DAVIS
Attorney for Plaintiff
1235 Park Avenue
New York City 10028
212-876-1609

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
Docket No. 77-7005

PRESCOTT H. RATHBORNE,

Plaintiff-Appellant,

- against -

CITADEL MANAGEMENT CO., INC.,
et al.,

Stipulation of Agreed
Facts Concerning Appell-
ees Woas, Siltan and
Salbian, and Withdraw-
ing Appeal As Against
Woas

Defendants-Appellees.
-----x

IT IS HEREBY STIPULATED by and between the under-
signed, as counsel for certain of the parties to this appeal,
as follows:

1. From February 5, 1971, through November, 1972,
defendant-appellee Madison Associates ("Madison"), a partner-
ship in which Edwin J. Glickman was a partner, held the bene-
ficial fee title to the building in which the plaintiff-appell-
ant resided ("plaintiff's building"), as well as the beneficial
fee title to certain other properties on the block in which
plaintiff's building was located. In this period, Madison
held the fee title to plaintiff's building through defendants-
appellees Woas Properties Corp. ("Woas"), Siltan Development
Corp. ("Siltan") and Salbian Realty Corp. ("Salbian"), each of
which acted solely as nominees for Madison.

2. Siltan and Salbian were also used by Madison
as nominees in connection with other properties on the block

STIPULATION

in addition to plaintiff's building. Woas was used by Madison as a nominee only with respect to plaintiff's building.

3. Before he vacated his apartment in November, 1972, plaintiff had become aware that Madison was the beneficial owner of his building and other properties on the block and that Woas, Siltan and Salbian had acted or were acting as nominees for Madison.

4. It is plaintiff's position on this appeal that the remedy available to him for landlord harassment under the State and City Rent Control regulations and laws (the "rent control remedy") was ^{not} exclusive ~~only~~ with respect to an entity which held fee title ^{not} only to plaintiff's building ^{but also} ~~and not~~ to ^{at least} any other buildings on the block, insofar as activities concerning said other buildings are involved.

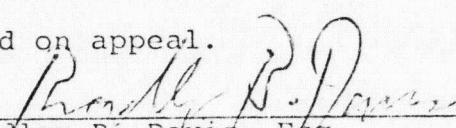
5. It is the position of Madison, Glickman, Woas, Siltan, Salbian, Citadel and Urban that the rent control remedy was exclusive with respect to all such appellees since they were the fee owners (and their agents) of plaintiff's building, and regardless of whether they also were the fee owners (and their agents) of other buildings on the block.

6. Since, under the above stipulated facts and under either plaintiff's or appellees' view of the law, the ^{within} ~~rent control~~ remedy ^{sought excludes} ~~was exclusive with respect to~~ Woas, this

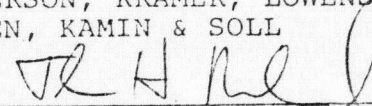
STIPULATION

appeal is withdrawn as against Woas without costs and without attorneys' fees and with prejudice.

7. This stipulation will be included in the joint appendix as part of the record on appeal.


Bradley B. Davis, Esq.
Attorney for Plaintiff-Appellant
1235 Park Avenue
New York, New York 10028
(212) 876-1609

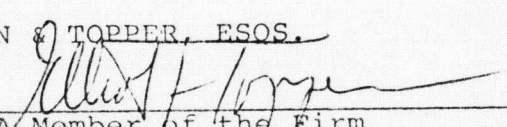
NICKERSON, KRAMER, LOWENSTEIN,
NESSEN, KAMIN & SOLL

By: 

A Member of the Firm

Attorneys for Defendants-Appellees
Madison Associates, Edwin J.
Glickman, Woas Properties Corp.,
Siltan Development Corp. and
Salbian Realty Corp.
919 Third Avenue
New York, New York 10022
(212) 688-1100

TURCHIN & TOPPER, ESQS.

By: 

A Member of the Firm

Attorneys for Defendants-Appellees
Citadel Management Corp. and
Urban Relocation Co.
60 East 42nd Street
New York, New York 10017
(212) MO1-0420

Dated:

SO ORDERED:

SECOND CIRCUIT COURT OF APPEALS

Index No. 77-7005

PRESCOTT H. RATHBORNE

Plaintiff

against

CITADEL MANAGEMENT CO., INC., et al

Defendant

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK, COUNTY OF NEW YORK

SS.:

The undersigned being duly sworn, deposes and says:

*Deponent is not a party to the action, is over 18 years of age and resides at
920 Middleneck Road, Great Neck, N.Y.*

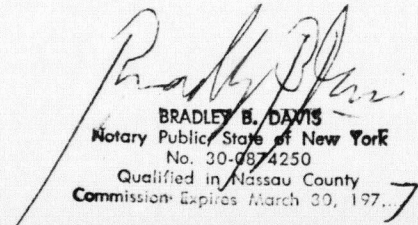
That on February 25, 1977 deponent served the annexed
appendix (2 copies each)
on Nickerson, Kramer, Lowenstein, Nessen, Kamin & Soll, and
attorney(s) for Turchin & Topper
in this action at 919 Third Avenue and 60 E. 42 Street, New York, N.Y. respectively
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper post office—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

Sworn to before me

February 24, 1977

The name signed must be printed beneath

DUKE L. FUNDERBURKE


BRADLEY B. DAVIS
Notary Public, State of New York
No. 30-0874250
Qualified in Nassau County
Commission Expires March 30, 1977